

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	No. 19-cv-05705.
	:	(MKV)
ANATOLY HURGIN, ALEXANDER	:	
AUROVSKY, ABILITY COMPUTER &	:	
SOFTWARE INDUSTRIES LTD, and	:	
ABILITY, INC.,	:	
	:	
	:	
Defendants.	:	

REMOTE VIDEO-RECORDED
DEPOSITION OF STEVEN DAVIDOFF SOLOMON
December 13, 2021

Job No. 203713
Stenographically reported by:
LAURA AXELSEN, CSR NO. 6173
RMR, CCRR, CRR, CRC

1 UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 ---oOo---

4 SECURITIES AND EXCHANGE :
COMMISSION, :

5 Plaintiff, :

6 vs. :

: No. 19-cv-05705.
: (MKV)

7 ANATOLY HURGIN, ALEXANDER :
8 AUROVSKY, ABILITY COMPUTER & :
SOFTWARE INDUSTRIES LTD, and :
9 ABILITY, INC., :

10 Defendants. :
11 _____ :

12 BE IT REMEMBERED THAT, pursuant to Notice and
13 on Monday, December 13, 2021, 9:01 a.m., with all
14 participants being present via Zoom videoconference,
15 before me, LAURA AXELSEN, a Certified Shorthand
16 Reporter, remotely appeared

17 STEVEN DAVIDOFF SOLOMON,
18 Called as a witness by the Defendants.

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APPEARANCES

FOR THE PLAINTIFF:

U.S. SECURITIES AND EXCHANGE COMMISSION

BY: DONALD SEARLES, ESQ.

JENNIFER CALABRESE, ESQ.

444 South Flower Street

Los Angeles, California 90071

FOR THE DEFENDANTS:

MORRISON COHEN

BY: JASON GOTTLIEB, ESQ.

DANIEL ISAACS, ESQ.

909 Third Avenue

New York, New York 10022

There also being present Brent Jordan,
videographer.

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1 VIDEOGRAPHER: Good morning, Counselors.
2 My name is Brent Jordan. I'm the certified legal
3 videographer in association with TSG Reporting, Inc.
4 Due to the severity of the COVID-19 and following
5 the practice of social distancing, I will not be in
6 the same room with the witness. Instead, I will
7 record this videotaped deposition remotely. The
8 reporter, Laura Axelsen, also will not be in the
9 same room and will swear the witness remotely.

10 Do all parties stipulate to the validity
11 of this video recording and remote swearing and
12 that -- and that it will be admissible in the
13 courtroom as if it had been taken following Rule 30
14 of the Federal Rules of Civil Procedures and the
15 State's rules where this case is pending?

16 MR. GOTTLIEB: Yes.

17 MR. SEARLES: So stipulated.

18 VIDEOGRAPHER: Thank you. This the start
19 of Media No. 1. The videotaped deposition of
20 Steven D. Solomon taken in the matter of Securities
21 and Exchange Commission V. Anatoly Hurgin, et al.
22 filed in the United States District Court for the
23 Southern District of New York, Case No. 19-cv-05705.
24 This deposition is taken on December 13th, 2021,
25 at approximately 9:02 a.m.

1 My name is Brent Jordan. I'm the legal
2 video specialist from TSG Reporting, Inc.
3 headquartered at 228 East 45th Street, New York,
4 New York. The court reporter is Laura Axelsen in
5 association with TSG.

6 Will counsel please introduce yourselves
7 for the record.

8 MR. GOTTLIEB: I'm -- excuse me. Good
9 morning. This is Jason Gottlieb from Morrison
10 Cohen. I'm here with my partner, Dan Isaacs, also
11 from Morrison Cohen, and we represent defendants
12 Anatoly Hurgin and Alexander Aurovsky.

13 MR. SEARLES: Donald Searles on behalf of
14 the SEC.

15 MS. CALABRESE: Jennifer Calabrese on
16 behalf of the SEC.

17 VIDEOGRAPHER: Will the court reporter
18 please swear in the witness.

19 STEVEN DAVIDOFF SOLOMON
20 having been duly sworn/affirmed
21 under penalty of perjury
22 testified as follows:

23 EXAMINATION BY MR. GOTTLIEB

24 MR. GOTTLIEB: Q. Good morning,
25 Professor Solomon. My name is Jason Gottlieb from

1 Morrison Cohen, as you've just heard. Have you ever
2 been deposed before?

3 A. I have.

4 Q. Okay. So you know the basic ground rules,
5 but let's just go over them just in case. I will be
6 taking the deposition today. I will be asking a
7 question and you'll be answering the questions.
8 Please wait for me to finish my questions before
9 answering. Okay?

10 A. Okay.

11 Q. As you know, we need verbal responses for
12 the purposes of the record, so please don't just nod
13 your head or shake your head as a response. We need
14 the actual words to come of your mouth. Okay?

15 A. Okay.

16 Q. If you don't understand my question,
17 please feel free to ask for clarification. I want
18 to make sure we're getting clear and clean questions
19 and answers. Okay?

20 A. Yes.

21 Q. Uhm, the attorneys from the SEC may make
22 objections today. Uhm, but unless there are
23 objections on attorney-client privilege or you're
24 otherwise directed not to answer, uhm, you will
25 still have to answer the questions to which there

1 are objections. Do you understand?

2 A. I understand what you're saying, but I
3 defer to my counsel -- not my counsel -- counsel
4 here in terms of instructions and how to answer.

5 Q. Fair enough. You can take a break at any
6 point you want, you know, if you want to use the
7 facilities, stretch your legs, whatever you'd like
8 to do. Just I ask you to wait until you've answered
9 the questions. No breaks in the middle of a
10 question. Okay?

11 A. Yes, in general I like to break every hour
12 for at least five or 10 minutes, but otherwise I
13 understand.

14 Q. Yeah. Me too. Me too. There will be
15 plenty of breaks. Don't worry. What did you do to
16 prepare for your deposition today?

17 A. Uhm, in general, I reviewed my report.

18 Q. Did you review any other documents?

19 A. I may have reviewed a few documents, yes.
20 I reviewed the report of Matthew Cain. I reviewed
21 the complaint. I reviewed some -- the roadshow
22 presentations made in connection with the SPAC
23 acquisition. And in general, I may have looked
24 through some of the depositions and some of the
25 other materials.

1 Q. Do you remember whose depositions you
2 looked at?

3 A. In general, it was Aurovsky's and
4 Hurgin's.

5 Q. Did you read any of the filings that
6 Aurovsky or Hurgin have filed in this litigation?

7 A. Uhm, I've read them in connection with my
8 report, but I don't recall reading them in
9 connection with my preparation for this matter --
10 the deposition preparation.

11 Q. Did you meet with anyone to prepare for
12 this deposition?

13 A. I'm not sure what you mean by met, but I
14 did speak with counsel.

15 Q. And counsel there is counsel for the SEC,
16 Mr. Searles?

17 A. Yes. Yes, Mr. Searles and Ms. Calabrese.

18 Q. How many times did you meet with them in
19 preparation for this deposition?

20 A. Twice.

21 Q. What about the -- your total number of
22 hours you met with them to prepare?

23 A. I didn't keep track. About an hour or so.

24 Q. Did you -- did you read -- excuse me --
25 did you read any documents in preparation for today

1 that were not referenced in your expert report?

2 A. Uhm, I don't think the report of Matt Cain
3 is referenced in my report. But otherwise I don't
4 recall any other documents.

5 Q. Okay. Let's just mark as an exhibit your
6 expert report. So, Dan, how do we want to do this?
7 Do you want to put it up on the screen? Shall I put
8 it up on the screen?

9 MR. ISAACS: So I'm going to share in the
10 chat message the exhibit, uhm, and hopefully
11 everyone can just double click it and open it on
12 their own or save it to their computer. And if it
13 doesn't work, we'll try something else.

14 MR. GOTTLIEB: Okay.

15 MR. ISAACS: I just shared it, and please
16 let me know if anyone's unable to open the document.

17 THE WITNESS: I should add I do have a
18 hard copy of my report in front of me. Is it
19 acceptable if I just refer to that? It would be
20 much easier for me.

21 MR. GOTTLIEB: That's perfectly fine with
22 me. I think we want to formally mark it with the
23 court reporter. And, Dan, are we starting marking
24 exhibits with Exhibit 264; is that correct?

25 MR. ISAACS: Yes. My records are that

1 we're starting with 264.

2 MR. GOTTLIEB: Q. So just to be sure
3 we're all looking at the same thing, I think we
4 should be. I have a PDF copy of your report. It's
5 36 pages long. It contains your report. It
6 contains an Exhibit 1, which has your C.V.
7 Exhibit 2, cases where expert deposition was taken
8 or testimony given in a last four years. And
9 Exhibit 3 is a list of documents considered.

10 Is that what you have in front of you,
11 Professor Solomon?

12 A. Yes.

13 MR. GOTTLIEB: Okay. So let's mark this
14 document as Exhibit 264. And obviously it's
15 perfectly fine for you just to use the paper copy in
16 front of you.

17 (EXHIBIT 264 WAS MARKED FOR
18 IDENTIFICATION.)

19 MR. GOTTLIEB: Q. Seems silly to ask
20 this, but just for the record, do you recognize this
21 exhibit, Exhibit 264?

22 A. I do.

23 Q. And what is it?

24 A. It appears to be a copy of my expert
25 report.

1 Q. Who first contacted you about serving as
2 an expert in this matter?

3 A. I believe it was Mr. Searles.

4 Q. Did you speak with anyone else about
5 serving as an expert in this matter?

6 A. I suppose in fullness, after I filed my
7 report I was contacted by a litigation consulting
8 firm, which I guess wasn't aware that I had filed
9 the report in this matter and asked if I would be
10 interested in serving as a rebuttal expert in this
11 matter.

12 Q. Oh, for the defense?

13 A. For you, yes.

14 Q. Oh, were you interested?

15 A. No, I asked who the parties were. And as
16 soon as I saw the parties, I declined any
17 communication.

18 Q. Fair enough. Did you speak with anyone
19 else other than Mr. Searles?

20 A. No.

21 Q. Did you speak with Ms. Calabrese?

22 A. No.

23 Q. Calabrese. I'm sorry, Jennifer. When
24 were you initially retained by SEC?

25 A. I don't recall. You know, time doesn't

1 really have any meaning anymore. Maybe five or six
2 months ago. I just need to refresh my recollection.

3 Q. The date of your expert report is
4 November 1st, 2021. Were you contacted about a
5 month before then or two months or six months
6 roughly?

7 A. I -- I believe it was the spring, but I
8 really would need to check my records.

9 Q. Okay. Did you execute an engagement
10 letter with the SEC?

11 A. I don't know if we do an engagement
12 letter. There's a formal process when you work for
13 the government where you have to sign a number of
14 documents. I don't know if there's an engagement
15 letter or not. I'd need to check my records.

16 Q. What is the rate that you're charging for
17 your time on this matter?

18 A. It's set forth in my report. It's \$900 an
19 hour.

20 Q. How many hours have you billed for
21 preparing the report?

22 A. Roughly 30 to 40 hours.

23 Q. And I assume you're being paid for your
24 time here today?

25 A. I am.

1 Q. How many hours did you bill for preparing
2 for the deposition today?

3 A. I'd need to check my records. Maybe five
4 to 10 -- up to 10 hour -- I should add that the \$900
5 per hour is a discount from my normal rate for the
6 government.

7 Q. You're doing that discount because it's a
8 government case?

9 A. Yes. I give a discount to government
10 cases.

11 Q. How did you go about preparing?

12 A. I'm trying to help out all of our citizens
13 here, including you.

14 Q. How did you go about preparing your
15 report?

16 A. I'm not sure what you mean by that. Can
17 you be more specific?

18 Q. Well, Mr. Searles contacted you, said are
19 you interested in doing a report. Clearly at some
20 point you said yes, and then you were engaged and
21 then you prepared this report. What's your -- what
22 was your process? How did you prepare the report?
23 What did you do?

24 A. Well, I don't necessarily agree with your
25 description of what happened in general. I was

1 contacted by Mr. Searles. I was asked if I might be
2 able to offer my expertise in certain opinions in
3 this matter, which were not set therein. I reviewed
4 the complaint. I had a discussion with Mr. Searles
5 and felt that these were areas where my expertise
6 might be relevant and there were opinions I could
7 offer.

8 Once I was engaged, we did a process where
9 I reviewed the relevant documents. I asked for
10 certain documents. They were provided to me. I had
11 certain more documents that were provided to me, and
12 then I formulated the opinions that I provided in
13 this matter.

14 Q. Did anyone assist you in the preparation
15 of your report, other than Mr. Searles?

16 MR. SEARLES: Objection; assumes facts not
17 in evidence.

18 THE WITNESS: No.

19 MR. GOTTLIEB: Q. You didn't have any
20 teaching assistants or research assistants help you
21 out on it?

22 A. No. There was some footnoting that I
23 think I asked the SEC paralegal to do, but that was
24 about it. Like cite checking.

25 Q. Have you ever spoken with Anatoly Hurgin?

1 A. No.

2 Q. Have you ever spoken with Alexander
3 Aurovsky?

4 A. No, not that I'm aware of.

5 Q. Have you ever spoken with Ben Gordon?

6 A. Not that I'm aware of.

7 Q. Have you ever spoken with Mitch Gordon?

8 A. Not that I'm aware.

9 Q. Have you ever spoken with Shai Greenwald?

10 A. Not that I'm aware of.

11 Q. Please let's look at your report. You
12 have a section on qualifications, Paragraph 2
13 through 8.

14 A. Yes.

15 Q. In Paragraph 4, you mentioned being a
16 corporate attorney at Shearman and Sterling and at
17 Freshfields. You said you regularly advised clients
18 on securities laws issues, including customs and
19 practices relating to the disclosure of non-public
20 information by FPIs and U.S. public companies.

21 Do you see that?

22 A. I do.

23 Q. Just for our record, what is FPIs? What
24 is an FPI?

25 A. An FPI is a foreign private issuer. It's

1 a defined term under the securities laws and
2 generally encompasses a non-U.S. company that is
3 listed in -- on the United States exchange or quoted
4 on the NASDAQ.

5 Q. Tell me a little bit more about your --
6 your practice at Shearman, particularly as it
7 relates to any of the issues in the -- expounded
8 upon in your report.

9 A. Well, that's a broad question, and I'm not
10 sure what issues you're referring to. But in
11 general, my practice at Shearman, particularly in
12 London, focused on representing foreign private
13 issuers in connection with takeovers, corporate
14 governance, securities offerings.

15 I also did IPOs. And as part of that, I
16 regularly advised FPIs, foreign private issuers, on
17 their disclosure obligations under the United States
18 securities law, the requirements of the SEC forms,
19 uhm, the liability that's associated with failure to
20 comply with those issues, and the processes and
21 procedures that you utilize when you're filing the
22 SEC documents and the requirements thereof,
23 particularly if you're a director or officer of the
24 company.

25 Q. Okay. And you were -- when you were at

1 Shearman, you were an associate, I take it?

2 A. I was.

3 Q. Can you estimate how many deals you worked
4 on while you were at Shearman?

5 A. I mean, tens of deals, 50 to a hundred.

6 Q. Were you generally the person reading
7 those deals?

8 A. Not initially, but I was an attorney from
9 1995 to 2004 both at Shearman Sterling, Freshfields
10 and a C neighbor member. We had the tech boom
11 starting in about '98, and so we were clearly
12 understaffed and overworked. So starting in about
13 '98, '99, I was the senior associate on most
14 transactions. And then when I came to London, I was
15 the primary attorney on the transactions I worked on
16 for the most part.

17 Q. How often did you speak personally with
18 the directors and officers of companies regarding
19 their review of their public disclosures?

20 A. I mean, it was constant. So I made
21 presentations to boards about these issues. I would
22 work with management to prepare these issues. I
23 would -- and these disclosures. It was constant.

24 Q. Would you say that the -- the management
25 that you were working with was reliant on you to

1 guide them on federal securities laws?

2 A. I'm not sure what you mean by that. So in
3 general, these were not, uhm, unsophisticated
4 people. They were people that were working in
5 western companies. They were directors of
6 companies. They were aware that the federal
7 securities laws, like any laws and their local laws
8 in their country, have significant obligations that
9 apply to them.

10 So they were engaged in terms of their
11 responsibilities and aware that they were taking on
12 certain responsibilities to understand these
13 disclosure issues, to read the documents that they
14 had, and to work with me to make sure that those
15 documents are accurate.

16 Q. You said that these people were generally
17 sophisticated. Did you ever work with less
18 sophisticated people?

19 MR. SEARLES: Objection; vague.

20 THE WITNESS: I think you're -- you're
21 talking about, like -- you're trying to put a
22 meaning on sophisticated. And so I worked with a
23 variety of people from a variety of backgrounds. So
24 some of them were start-up -- worked at start-ups
25 and didn't have college educations. Some of them

1 were investment bankers. Some of them were U.S.
2 citizens. Some were German citizens. I did a fair
3 number of Israeli deals during my time in Europe.
4 So it was a fair -- a broad panoply of backgrounds.

5 And what I'm referring to when I was
6 answering the last question is people in a position
7 of tens of millions of dollars are at stake if not
8 more. They're directors of companies. They're
9 officers of companies. They have fiduciary duties
10 and obligations. They're aware that they are
11 engaging in significant transactions, which involve
12 engaging in a foreign legal system. They're
13 inherently aware that that involves certain new
14 obligations that they need to understand. They're
15 aware that documents are being filed. They're
16 signing legal contracts and know that they need to
17 be read in other laws.

18 MR. GOTTLIEB: Q. You just listed a -- a
19 long list of things that they are aware of. How --
20 how are they made aware of those things? As a
21 corporate attorney, will you tell them that they
22 need to do those things?

23 A. So I think it comes from a couple things.
24 So one, as part of this you review the documents
25 with them. You make sure they're aware of the

1 material terms from an attorney perspective, but I
2 think, again, serving in these roles and otherwise,
3 I never saw or met anyone that wasn't aware that
4 when you sign a contract you need to read it and
5 understand it.

6 It's no different than when you buy a
7 house and you read the contract to see what the
8 price is. So I think that there's obligations on
9 both sides and inherent understandings on both
10 sides.

11 Q. You -- you mentioned that you worked with
12 some other FPIs, the Israelis or Germans. Did you
13 ever work with any officers or directors who did not
14 have a good understanding of the United States
15 federal securities laws?

16 A. Yes.

17 Q. And what would you do to work with them?

18 A. In general, when we were involved in a
19 foreign private issuer, there was both local counsel
20 and U.S. counsel. Sometimes we did both for my
21 firms. And, again, I worked at two firms. So when
22 I'm answering these questions generally, it's both
23 at Freshfields, which was a non-U.S. firm, and also
24 Shearman and Sterling. Uhm, we would provide drafts
25 of the documents.

1 We reviewed material information. We
2 would go over the contracts with them at board
3 meetings. We would summarize those contracts. We
4 would summarize the disclosure. It would be signed
5 off upon. I'm a director now of a public company,
6 and that's what we do now.

7 And that's the procedures that are
8 followed. And directors have an inherent
9 understanding to review that. You don't sign, for
10 example, leases or lease property to your company
11 without an understanding of the contract and -- and
12 how it works or otherwise. And as part of that, the
13 U.S. attorney's role is to familiarize them with
14 the -- the minutiae and detailed obligations of
15 what's going on in terms of understanding by the
16 clients and otherwise.

17 And the client similarly, because they're
18 involved in a high-profile transaction, are reading
19 the documents and reviewing it.

20 Q. Is there any particular reason you moved
21 from Shearman to Freshfields?

22 A. You know, I mean, this is more personal
23 stuff. But there are some personal reasons. I
24 wanted to stay in London because of some
25 relationships I had there. And I was offered the

1 opportunity for a high-profile position in their
2 U.S. practice, so I moved over there.

3 Q. Since you left Freshfields in 2004, have
4 you practiced law, or have you been in academia only
5 or something else?

6 A. Really, no. I mean, that's a pretty broad
7 question. You know, I have at times done legal work
8 for people. I do expert witness. I've started a
9 few companies. Currently serve as a CFO of a
10 company that I started. I'm a director of a
11 publicly traded company. I founded a start-up that
12 raised about five or six million dollars that I was
13 COO of at the time. And, of course, I'm a professor
14 and otherwise. But if there's a particular area
15 you'd like to talk about, I'm happy to.

16 Q. Have you represented or advised any public
17 companies, private companies, directors or officers
18 in connection with a transaction since leaving
19 Freshfields in 2004?

20 A. I don't know what you mean by advise. I
21 mean, I'm currently a director of a publicly traded
22 SPAC. So I mean, that's what we're going to be
23 doing. That's what we're involved in. I have at
24 times given advice and consulting to parties in
25 connection with M&A transactions or capital raising

1 or otherwise.

2 Q. That SPAC is social capitals you've read
3 off holdings for; is that correct?

4 A. Yes.

5 Q. How many directors does that -- I'm just
6 going to call that social capital, if that's okay
7 with you?

8 A. Well, there's about eight of those
9 probably, but --

10 Q. I know there's social capitals who've
11 read holdings one, two, three, and four. But I'm
12 only going to be referring to the one that you're a
13 director of. So I'm just going to call that --
14 let's call it Social Capital 4. How's that? Okay?

15 A. Sure.

16 Q. How many directors does Social Capital 4
17 have?

18 A. I haven't counted. I think it's five
19 including me.

20 Q. When did you start service as a director
21 on Social Capital 4?

22 A. About two months ago.

23 Q. Other than being a director, do you have
24 any other roles or duties for Social Capital 4?

25 A. I'm a director. I think that's enough.

1 Q. Other than Social Capital 4, have you ever
2 been an officer or director of a SPAC?

3 A. No, I've been asked before, but this is
4 the first one that I've said yes to.

5 Q. And just for our record, you understand
6 what a SPAC is. Can you please define that?

7 A. A SPAC is a special purpose acquisition
8 company.

9 Q. Thank you. Is Social Capital 4 publicly
10 traded?

11 A. Yes.

12 Q. Has it completed a business combination?

13 A. No.

14 Q. As a director of Social Capital 4, would
15 the opinions you set forth in your expert report
16 here about the customs and practices of directors be
17 equally applicable to you?

18 A. You need to look at the opinions, but I
19 think in general these -- these opinions would be
20 applicable to me. I mean, I filed this report
21 before -- just as I became a director otherwise.
22 But I would have filed the same report and nothing
23 in my time since has changed that.

24 Q. Is it right that Social Capital 4 is
25 seeking to acquire a private company in the

1 biotechnology space?

2 A. In general, although we reserve the right
3 to acquire in other space, and our particular focus
4 is in the immunology fields.

5 Q. How much experience do you have in
6 immunology?

7 A. In immunology? Uhm, I mean, I'm not a
8 Ph.D. immunologist if that's your question.

9 Q. Do you have any personal experience in
10 biotechnology at all?

11 A. I think a fair bit, yeah.

12 Q. Have you ever worked for a biotech
13 company?

14 A. I've done expert services for biotech
15 companies. I've represented biotech companies on
16 transactions, including those involved in
17 disclosure.

18 Q. So you were a lawyer for biotech
19 companies?

20 A. Again, that was your question if I worked
21 for them. When you're a lawyer representing
22 someone, you're working for them. And, again, I've
23 done expert witness services for biotechnology
24 companies.

25 Q. But have you ever --

1 A. I may have done other -- I'm not done.

2 Uhm, I may have done other -- other work, but those
3 are the two other areas that I recall.

4 Q. Have you ever been employed full-time for
5 a biotechnology company?

6 A. No.

7 Q. Have you ever served as a director or
8 officer of a biotechnology company?

9 A. I'm currently a director of a SPAC that's
10 in acquisition of a biotechnology company. But
11 other than that, no.

12 Q. Did you study biological sciences in
13 college or graduate school?

14 A. I did a little bit. It wasn't my major.

15 Q. Did you ever receive any formal training
16 relating to the biotechnology field?

17 A. I don't -- I don't know what that means.

18 Q. Did you ever work for a lab or any other
19 biotech company doing, not legal work, but
20 biotechnology work?

21 A. No.

22 Q. How do you intend to comply with the
23 customs and practices of a director of a public
24 company in relation to your duties to review any
25 disclosures made by Social Capital 4 about a target

1 company?

2 A. Well, it depends on the target company.
3 But, of course, as part of my directorship, I'll
4 read the disclosure. And so, for example, if we're
5 making disclosure of a contract and I have knowledge
6 of whether that contract exists or not, it's my duty
7 to say that it exists. It's my duty to make sure
8 that due diligence is properly done. It's my duty
9 to go over the material facets of the documents. I
10 read them and to make sure that I understand them
11 and that, to my knowledge, they correctly disclose
12 the existence of the material facts and what
13 happens. It's my duty, if I'm signing contracts or
14 consenting to my name to be included in proxy, to
15 understand those documents, to read them, to put in
16 the material terms.

17 Now, obviously I'm not an operating person
18 so I don't have specific knowledge of facts. But if
19 I had specific knowledge of facts, it would be to
20 disclose those facts, make sure they're correct. As
21 part of being a director of an operating company,
22 obviously it would be going over your material
23 information. Otherwise from the SPAC perspective,
24 this is an acquisition. So I need to make sure that
25 the diligence is done correctly, that there's a

1 fulsome investigation. Have to make sure that to
2 the extent reps and warranties are made, there's an
3 investigation and disclosure. We don't think that
4 there's sufficient backing for any circumstances
5 that are there. In general, that's -- that's my
6 duties.

7 Q. Do you anticipate relying on your own
8 personal counsel or the SPAC's legal counsel in any
9 respects?

10 MR. SEARLES: Objection; vague.

11 THE WITNESS: Yeah, I don't really know
12 how to answer that. I mean, again, I'm going to
13 read the documents and ask questions and make sure
14 that I understand it and make sure that we're
15 disclosing all material information.

16 MR. GOTTLIEB: Q. If there's material
17 about biotechnology that you don't understand, do
18 you anticipate relying on those with expertise in
19 the biotechnology field?

20 MR. SEARLES: Objection; misstates his
21 testimony.

22 THE WITNESS: Again, the duty of a
23 director is to understand the principles and to
24 inquire and not to blindly sit there and not read or
25 say that I don't understand or otherwise. The

1 extent that, for example, we're acquiring a company
2 that has one product, it's my duty as a director to
3 make sure that we've investigated that product, that
4 the product works, that the company we're acquiring
5 owns the rights to those contract -- to the product.
6 Uhm, and that's basic understanding of -- of
7 director fiduciary duties and what directors
8 normally do.

9 And I've -- I've been doing this for 30 years.
10 And frankly, I've never seen anyone say that's not their
11 duties, or I just won't read anything so it's okay.
12 I'll buy a house, but not -- I don't need to read
13 anything or even know what the price is. It's okay.
14 And so, you know, you have duties as directors, and you
15 have duties to do what you need to do. And I intend
16 fully to implement those duties. And I think and I hope
17 that one of the reasons they put me on the board is
18 because I will do that.

19 MR. GOTTLIEB: Q. Do you believe it's
20 your duty to review each and every disclosure and
21 independently verify each and every piece of
22 information in it?

23 A. That's not how it works. Uhm, and it's
24 not a you need to read every page of War and Peace
25 and memorize every word. When you're signing

1 documents or understanding documents or putting
2 forward documents, you need to read the material
3 terms and understand the material terms. The
4 material issues, you need to raise them and you
5 need to discuss them. I don't look at every single
6 piece of disclosure that goes out from the SPAC, but
7 I certainly look at the 10-Qs and 10-Ks and read
8 them.

9 We just filed a 10-Q, and I read the whole
10 thing and gave comments on it. And that is how it
11 works. You read the significant documents. If you
12 don't understand them, you engage with questions.
13 You know that you're in a U.S. legal system that's
14 complex, particularly if you're a non-U.S. legal
15 person and you work to understand them. You don't
16 blindly rely on people. And that's never been the
17 law or how things work.

18 Uhm, and if you're putting your name to a
19 document, you make sure that you understand the
20 material terms. And if you have any questions, you
21 discuss those with counsel or the relevant person
22 and raise them.

23 Q. Let's look at -- you mentioned the latest
24 10-Q from Social Capital 4 and that you had reviewed
25 that. Dan, can we put that up? I'm not sure if

1 you're going to drop it in the chat or on the
2 screen -- oh, sharing a file?

3 MR. ISAACS: I just dropped it in the
4 chat.

5 MR. GOTTLIEB: Great.

6 THE WITNESS: Yes.

7 MR. GOTTLIEB: Sorry. I'm -- my --
8 dealing with my technology here. So let's mark this
9 as Exhibit 265.

10 (EXHIBIT 265 WAS MARKED FOR
11 IDENTIFICATION.)

12 MR. GOTTLIEB: Q. Do you recognize this
13 document?

14 A. Uhm, it appears to be the September 30th
15 10-Q of a DMA data -- what we're calling Social
16 Capital 4.

17 Q. Are -- were you a director of this entity
18 when this was filed?

19 A. Yes.

20 Q. If you could turn to -- you'll see page
21 numbers in the bottom right-hand corner. Looking at
22 page 18 of 25.

23 A. Yep.

24 Q. You see there's a section that says,
25 "Special note regarding forward-looking statements"?

1 A. Yep.

2 Q. The second paragraph under that, you see
3 the section that says, "This condensed balance sheet
4 has been reported to give effect to the restatement
5 of our financial statements as of July 2nd, 2021."

6 You see that?

7 A. No, can you just say that again? Oh, it's
8 the second paragraph. Yes, I see it.

9 Q. Start of the second paragraph. What's a
10 restatement?

11 A. In general, it's where you restate your
12 financial statements. You do a SAB99 memo, and then
13 correct -- if you think that you have made a
14 material misstatement, then you correct that
15 misstatement.

16 Q. The next sentence after the one I just
17 read says that management identified errors made in
18 its historic financial statements where, "At the
19 closing of our initial public offering, we
20 improperly valued our Class A ordinary shares
21 subject to possible redemption."

22 Do you see that?

23 A. I do.

24 Q. Do you think that the management of Social
25 Capital 4 committed fraud in making those errors?

1 A. I don't even know where to begin this.
2 The SEC has been changing the accounting rules and
3 how they work for SPACs. And so this is responsive
4 to a change in the SEC accounting rules. No one has
5 accused us -- them of doing fraud or otherwise.
6 It's not like we, for example, said we had a
7 contract that didn't exist that was our significant
8 basis for revenue.

9 Q. Did -- do you think that anyone was
10 negligent in making these errors?

11 MR. SEARLES: Objection; asked and
12 answered.

13 THE WITNESS: No, again, what's going on
14 is the SEC has been changing the accounting rules.
15 And this is a correction to the accounting rules in
16 response to SEC changes and otherwise. I believe a
17 couple of hundred SPACs have restated their
18 financial statements -- actually more than a couple
19 hundred in the -- due to the changes in the SEC
20 accounting rules. And so this is what is going on
21 here.

22 MR. GOTTLIEB: Q. Did the SEC change
23 those accounting rules between the time that the
24 original financial statements, as of July 2nd, 2021,
25 were issued and this filed?

1 A. Yes.

2 Q. And you think that this error is replying
3 to an SEC clarification after that?

4 A. Again, you're -- you're misstating my
5 testimony and you're putting words in my mouth. I'm
6 not really prepared to discuss confidential
7 information at the board level or otherwise. But
8 the SEC actions and movements concerning
9 restatements are public knowledge, and I just
10 referred those. There is no one -- to even say this
11 is fraud is not even --

12 Q. I don't think it's just --

13 A. And no, no. Let me finish.

14 Q. Okay.

15 A. Please do not interrupt me. You asked me
16 not to interrupt you. Okay. Again, it's in
17 response to SEC changes and otherwise. And that's
18 what we did. And we did a SAB99 memo, and it was
19 corrected. And even to say it's fraud frankly is
20 offensive. This is not, again, where you're saying
21 you have a contract and that's the bulk of your
22 revenue and it doesn't exist and you never even
23 bothered to look at it. This is a correction made
24 in response to changing SEC rules.

25 THE REPORTER: (Clarification.)

1 MR. GOTTLIEB: Q. I'll be clear. I
2 don't think it's fraud either. Don't get me wrong.

3 MR. SEARLES: Objection; relevance.

4 MR. GOTTLIEB: Q. It's not relevant.
5 Fine. Go ahead. I'm just trying to be nice.

6 Look, my point is here it's possible to make
7 an error in a public -- in a public filing, isn't it?

8 MR. SEARLES: Objection; vague.

9 THE WITNESS: Not really sure what you
10 mean. Again, the disclosure speaks for itself. Is
11 there a particular type of error other than this one
12 that you're referring to?

13 MR. GOTTLIEB: Q. Well, it says,
14 "Management identified errors made."

15 And you've said that you don't think it's
16 fraud and you don't think it's negligent. So it's just
17 an error; is that correct?

18 MR. SEARLES: Objection; misstates his
19 testimony. Asked and answered.

20 THE WITNESS: Yeah, again, the disclosure
21 speaks for itself. I don't see the relevance of
22 this to this case or what it has to do with this
23 case.

24 MR. GOTTLIEB: Q. If there is any error
25 in any of the information that is in this filing, do

1 you believe you should be personally held liable for
2 that error?

3 MR. SEARLES: Objection; improper
4 hypothetical.

5 THE WITNESS: I think I'm not allowed to
6 object, but I think you're misstating the federal
7 securities laws also. If there is a material
8 misstatement or omission that's made in our
9 disclosure, I certainly have liability with respect
10 to it. And that's why I read these documents
11 carefully and ask questions and make sure that I
12 understand the key points and that to the extent
13 that we need to, there is that disclosure.

14 MR. GOTTLIEB: Q. I want to get to
15 the -- to the standard of that. What if you weren't
16 aware of the error? Are you still liable?

17 MR. SEARLES: Objection; improper
18 hypothetical.

19 THE WITNESS: So, again, you're -- you're
20 saying some error that I don't know hypothetically.
21 Again, as a director, you have a duty -- and I
22 detail these in my reports to read the documents, to
23 ask questions, to understand information. If you're
24 an officer, it's certainly -- it's -- your burden is
25 higher because your expectations are higher on you

1 on what you know.

2 If you're putting your name in a proxy
3 statement and consenting to its use, if you're
4 signing documents, if you've leasing property to the
5 company, if you're serving as a director of a
6 private company and a public company, I would expect
7 that you would be reading these documents and you
8 would understand them to your own formation and the
9 material contracts and the material -- that you own
10 the property that you say you do. That you're
11 working on this.

12 So that's -- if there's a specific
13 hypothetical you'd like me to think about, that's
14 fine. But in general, that's the duties that we
15 expect of directors. And that's the duties that I
16 apply as a director.

17 MR. GOTTLIEB: Q. Is it a strict
18 liability standard?

19 MR. SEARLES: Objection; vague.

20 THE WITNESS: Again, I'm not here to
21 answer questions of what the law is. The judge can
22 answer what the law is. There are standards under
23 various fraud -- fraud statutes. Some of them are
24 strict liability and some are not.

25 MR. GOTTLIEB: Q. Have you worked in the

1 past together with Matthew Cain?

2 A. I have.

3 Q. Let's start just academically. How many
4 academic articles have you written together?

5 A. I don't even know. More than five. Maybe
6 less than 10. It's on my r?sum?.

7 Q. Did you refer Mr. Cain to the SEC for this
8 case?

9 A. No.

10 Q. Do you know if he referred you?

11 A. No. I don't know either way, but I don't
12 believe he did.

13 Q. Have you and Mr. Cain ever discussed this
14 case?

15 A. Yes.

16 Q. What did you discuss?

17 A. Initially when I was retained, there was a
18 possibility that Dr. Cain would assist me on my
19 report. So I believe in my contract he has some
20 hours allocated to him, but I don't think he ever
21 worked with me on my report, certainly not in a
22 material matter, as I answered earlier, in terms of
23 helping my report. And then I think once he was
24 retained, we may have once or twice just discussed
25 that we were both retained on this matter. And

1 that's about it.

2 Q. Did you discuss the substance of your
3 report with him?

4 A. No.

5 Q. Did you discuss the substance of his
6 report?

7 A. Not really. I mean, other than he
8 mentioned that he was doing a damages report. It
9 didn't go much beyond that.

10 Q. Do you have any written communications
11 with Dr. Cain relating to this matter?

12 A. No.

13 Q. When you spoke to him, you would speak to
14 him orally?

15 A. Yes.

16 Q. Let's look back to your report. And
17 specifically let's look at from page 33 of the PDF.
18 Exhibit 2 is a list of cases where expert deposition
19 is taken or testimony given in the last four years.

20 Did you have other cases before the last four
21 years --

22 A. Yes.

23 Q. -- where you gave expert deposition or
24 other testimony?

25 A. Yes.

1 Q. Could you -- I'd like to call for the
2 production of a complete list of those cases where
3 you provided expert deposition or other testimony.
4 That request is to the SEC, but, Professor Solomon,
5 I assume you have a list of those cases; is that
6 correct?

7 A. I'm going to let counsel answer those
8 questions.

9 MR. SEARLES: We'll get back to you on
10 that request, Mr. Gottlieb.

11 MR. GOTTLIEB: Q. Okay, but just a
12 factual question. You do have a list of the cases
13 where you gave expert deposition or other testimony
14 before the last four years, correct?

15 A. I'm going to defer to counsel to answer
16 that question.

17 MR. SEARLES: He may or may not have such
18 a list. We'll get back to you if he does have such
19 a list, Mr. Gottlieb. The time for discovery
20 requests is past.

21 MR. GOTTLIEB: This is the expert
22 testimony. I'm asking about the expert testimony
23 that he's given.

24 MR. SEARLES: Understood.

25 MR. GOTTLIEB: Q. But just a factual

1 question, and this is something that you can answer.

2 Do you have a list of cases where you gave expert
3 deposition or other testimony before the last four
4 years?

5 A. Again, I'm going to defer to counsel
6 whether to answer that or not.

7 Q. I don't think you can defer to counsel on
8 a fact question like that. Please answer the
9 question.

10 A. I'm going to defer to counsel about
11 whether to answer that question or not. Thank you.

12 MR. GOTTLIEB: Mr. Searles, are you
13 instructing him not to answer the question?

14 MR. SEARLES: No, I don't know whether
15 such a list exists.

16 MR. GOTTLIEB: Well, I know -- I know who
17 does know that question.

18 MR. SEARLES: Well, I don't know if he
19 knows either.

20 MR. GOTTLIEB: Well, he can answer if he
21 knows.

22 MR. SEARLES: All right.

23 MR. GOTTLIEB: Correct?

24 MR. SEARLES: You may answer the question,
25 Mr. Solomon.

1 THE WITNESS: Uhm, I do have a list. I'm
2 not sure if it's complete or not or if it includes
3 everything. So I'd need to confirm what it includes
4 and what it doesn't.

5 MR. GOTTLIEB: Q. In how many of these
6 cases -- just on this list, expert deposition taken
7 or testimony given in the last four years. In how
8 many of these were you discussing the duties of
9 directors or officers?

10 A. Uhm, so I'm looking at Exhibit 2. I'd say
11 it was certainly the majority of these. I can go
12 through each of these if you would like, but
13 certainly the majority.

14 Q. In how many of these cases were you
15 qualified as an expert at trial?

16 A. You mean, did I actually testify at trial?

17 Q. Sure.

18 A. Well, the ones that went to trial, the
19 Ulisses was an arbitration, and I testified.
20 Hussein v. Razin went to trial, and I testified.
21 McClatchy went to trial, and I testified. Those are
22 the ones that I recall.

23 Q. Okay. In the Ulisses case, Item No. 3 on
24 Exhibit 2, did you provide testimony about the
25 duties of an officer or director?

1 A. In general, yes.

2 Q. Did it have to do with a SPAC?

3 A. No.

4 Q. Did it have to do with an FPI?

5 A. Yes.

6 Q. Was it about a public company? I'm sorry.
7 Let me sharpen that question.

8 Was the FPI a public company or a private
9 company?

10 A. It was public.

11 Q. Number 10, Hussein v. Razin -- or Razin,
12 did you testify about duties of officers or
13 directors?

14 A. Yes.

15 Q. Did that case involve the officers or
16 directors of a public company or a private company?

17 A. Public company.

18 Q. Was that public company an FPI?

19 A. No.

20 Q. Was it a SPAC?

21 A. No.

22 Q. Was there a SPAC involved in that case?

23 A. No, but the duties are the same across the
24 board. I don't -- I don't see the distinction that
25 you're trying to draw, but it was not a SPAC.

1 Q. No. 17, the McClatchy v. Pruitt case, was
2 that about -- did your testimony there involve the
3 duties of an officer or director?

4 A. Yes.

5 Q. Was a SPAC involved in that case?

6 A. No.

7 Q. Were the directors about whose -- were the
8 directors or officers about whose duties you were
9 testifying, were they directors or officers of a
10 public company or a private company?

11 A. Public.

12 Q. Was it a U.S. public company or a FPI?

13 A. McClatchy is a U.S. public company.

14 Q. Has a court ever declined to qualify you
15 as an expert in any subject matter?

16 A. No.

17 Q. Has an arbitrator or other tribunal ever
18 declined to qualify you as an expert in any subject
19 matter?

20 A. No.

21 Q. Can you estimate the portion of your
22 annual income in 2021 that comes from serving as an
23 expert witness?

24 A. I haven't looked at 2021, but historically
25 it's about 50 percent of my income.

1 Q. Aside from this litigation, have you ever
2 performed any other work or services for the SEC?

3 A. Yes.

4 Q. What type?

5 A. I'm currently engaged by the SEC to advise
6 them on a charging decision with respect to
7 disclosure failures by officers.

8 Q. That's not in -- not in connection with
9 this case, correct?

10 A. It's not in connection with this case.

11 Q. Did that case involve an FPI?

12 A. Not really comfortable talking about it
13 anymore. It's a private -- it's a confidential
14 matter. And I'm subject to a confidentiality
15 restriction.

16 MR. GOTTLIEB: Okay. We've been going
17 about an hour. Let's take a five-minute break
18 respecting your earlier wishes.

19 THE WITNESS: Thank you.

20 MR. GOTTLIEB: And we'll come back on in
21 five minutes.

22 THE WITNESS: Do we have -- just before
23 everyone leaves, do we have breakout rooms in this
24 deposition or not?

25 MR. GOTTLIEB: I don't think we do. Uhm,

1 you know, you're obviously -- when we -- when we go
2 on break, you can put the Zoom on mute and stop
3 video and then you're free to --

4 THE WITNESS: That's fine. I was just
5 curious if I should go anywhere. But thank you for
6 letting me know.

7 MR. GOTTLIEB: No, no. We just -- we just
8 typically shut everything down and then come back
9 after five.

10 VIDEOGRAPHER: Off video at 9:59 a.m.

11 (The deposition was in recess from 9:59 to
12 10:10.)

13 VIDEOGRAPHER: Back on video at 10:10 a.m.

14 MR. GOTTLIEB: Q. Professor Solomon, are
15 you familiar with a case called In re Ampal-American
16 Israel Corp.?

17 A. Yes.

18 Q. Is that case listed on Exhibit 2 of your
19 expert report?

20 A. I believe it is. I would need to check
21 again, but yes.

22 Q. Okay. There it is. It's the first one.
23 Were you an expert for the plaintiff or the
24 defendant in that case?

25 A. I was an expert for the plaintiff. I am

1 an expert for the plaintiff.

2 Q. And were you retained as an expert on
3 corporate governance?

4 A. In general, yes.

5 Q. Did the court in that case exclude your
6 testimony based on your original expert report?

7 A. No.

8 MR. GOTTLIEB: Dan, could we put up this
9 Tab 4? Let's mark a new exhibit.

10 MR. ISAACS: I just dropped it in the
11 chat.

12 MR. GOTTLIEB: This is Exhibit 266.

13 (EXHIBIT 266 WAS MARKED FOR
14 IDENTIFICATION.)

15 MR. GOTTLIEB: Q. A May 14th, 2020,
16 decision in In re Ampal-American Israel Corp.?

17 A. Yes.

18 Q. So if we look at page 4 of this PDF, down
19 towards the bottom, there's a section that says, "C,
20 the opinions."

21 Do you see that part?

22 A. I do.

23 Q. And you made a factual finding that the
24 special committee relied primarily on Eluz, E-l-u-z,
25 with respect to various points; is that correct?

1 A. No, that's not correct.

2 Q. Is that not what the court finds?

3 A. Uhm, so, again, I filed about 40 or 50
4 reports in my career, and this is the one report out
5 of the 40 where the court felt that it wasn't
6 helpful and didn't go direct full to the testimony.
7 What was -- happened in this matter was there was a
8 motion for reconsideration filed. The court said
9 that to the extent that I make opinions on the facts
10 and the law, the court felt that wasn't appropriate
11 testimony, which I agree. I wasn't there to give
12 opinions on the facts of the law. The court is
13 qualified to do that.

14 The court also, in their consideration
15 motion, felt that my opinions went to the actions of
16 the special committee and not the actual officer
17 here, which is Ms. Eluz. The court subsequently
18 granted leave to file an amended report. I filed
19 that amended report. Another motion to exclude was
20 made, which was denied, and I was deposed in this
21 matter with an opposing report filed by another law
22 professor in the last month or two. So my issue is
23 you're mischaracterizing my testimony, and the
24 record just speaks for itself.

25 Q. The court finds that to permit -- so I'm

1 quoting here, and this is from the last page of
2 the -- of the opinions, page 5, in the second
3 column, "To permit Solomon to suggest that Eluz
4 breached her fiduciary duty because the board or the
5 special committee did not follow these best
6 practices creates the risk that a jury will
7 attribute the board's or the special committee's
8 purported failure to Eluz."

9 Did I read that correctly?

10 A. Again, we can re-read the opinion, if
11 that's helpful to you. But the court, in that
12 opinion, found that -- thought that these were
13 issues that were the purview of the judge and the
14 jury and, again, went to special committee
15 practices. I subsequently filed a report, which
16 went directly to officer, director duties, and
17 customs and practices, which the court allowed to go
18 forward and be filed. And I was deposed on this
19 matter.

20 And, again, the record just speaks for
21 itself, and I'm currently an expert in this matter
22 and have been offered to give on customs and
23 practices of officers in connection with the issues
24 in that case.

25 Q. So you mentioned before that you were not

1 there to give opinions on the facts or the law. Is
2 that correct?

3 A. I'm not here to give -- and my report does
4 not give opinions on the facts or the law. The
5 ultimate conclusions are for the judge and the jury.
6 I'm here to assist them on principles of corporate
7 governance, as I've done in many other matters and
8 the -- the attorneys can offer up those opinions for
9 the purposes that they deem appropriate. And the
10 judge can allow them in as she deems appropriate.

11 Q. And in this opinion, under -- still on the
12 same page, page 5 under Heading 2, improper law
13 testimony, the judge holds -- and I'm quoting here.
14 "The report contains a section titled the Law
15 Governing Conflict of Interest Transactions in which
16 Solomon provides commentary on legal matters, such
17 as the business judgment pool, the duty of loyalty,
18 and the duty of care. Solomon's legal analysis is
19 not limited to the section and is included in other
20 parts of the report. Testimony as to the applicable
21 legal standard is plainly improper."

22 Do you see that section of the judge's
23 opinion?

24 A. I see that, yes.

25 Q. Do you agree that testimony as to the

1 applicable legal standard is plainly improper?

2 MR. SEARLES: Objection; relevance.

3 THE WITNESS: So, again, you're taking a
4 part of an opinion, an entire back and forth,
5 that -- uhm, out of context. Again, I've given a
6 report, which has been accepted. A motion to
7 exclude has been denied about the issues of customs
8 and practices of officers in connection with the
9 issues in that case, which was approval of a
10 conflict of interest transaction. And that has not
11 been excluded, and I've been deposed on it.

12 Again, without reading the full report
13 here in the Ampal case and the opinion, I think
14 you're mischaracterizing what's going on. And I
15 don't see the relevance of that opinion or this to
16 the corporate governance opinions, which I'm giving
17 in this matter, which I've given before to courts at
18 trial and otherwise.

19 MR. GOTTLIEB: Q. The question I asked
20 was is it correct to say that testimony as to the
21 applicable legal standard is plainly improper?

22 MR. SEARLES: Objection; relevance.
23 Misstates the law.

24 THE WITNESS: So, again, I'm not here to
25 give opinions on the law. That's for the judge.

1 MR. GOTTLIEB: Q. Okay. So you're --

2 A. You're asking me if -- if -- if -- again,
3 the opinion speaks for itself. I'm not here to give
4 opinions on the facts of the law. I'm here to
5 assist the jury and the judge in understanding
6 complex issues of corporate governance, how customs
7 and practices work in terms of disclosure,
8 expectations of officers in terms of those customs
9 and practices, and what they ordinarily do along
10 with lawyers.

11 And so reading one line out of an opinion
12 without going through the entire history of the case
13 where I do have an admitted report which goes to
14 those issues is -- is mischaracterizing the record
15 and not relevant to this matter.

16 Q. I've asked it twice. Let me see if I can
17 ask it once more and get a straight answer.

18 MR. SEARLES: Objection; argumentative.

19 MR. GOTTLIEB: Q. Do you think it's
20 proper for you to provide expert testimony as to an
21 applicable legal standard?

22 MR. SEARLES: Objection; asked and
23 answered. Improper hypothetical. Vague. Misstates
24 the law. We can proceed with another question.

25 MR. GOTTLIEB: Q. Please answer the

1 question.

2 MR. SEARLES: No.

3 MR. GOTTLIEB: I'm sorry. Are you
4 instructing him not to answer?

5 MR. SEARLES: We've already gone over
6 this subject twice.

7 MR. GOTTLIEB: Q. No, I asked a question
8 twice, and then I was informed that I was
9 mischaracterizing things when I was literally just
10 reading a sentence and asking him if it was right.
11 So let me ask the question.

12 Professor Solomon, is it proper for you to
13 provide expert testimony on an applicable legal
14 standard?

15 MR. SEARLES: Objection; misstates the
16 law. Misstates his testimony.

17 THE WITNESS: I've answered that question
18 twice now, and I just ask if you want that we read
19 back my last answer, which answered your question.

20 MR. GOTTLIEB: Q. No, we're not going to
21 do that. That last answer went on for too long.

22 A. Excuse me, Mr. Gottlieb, can I ask you to
23 be respectful to me? Like, commenting on my answers
24 and making remarks is not appropriate. And I have
25 been nothing but respectful to you, and I just ask

1 that you do the same with me, please.

2 Q. You write a column for the New York Times
3 called the Deal Professor; is that right?

4 A. I do. Although I don't write it that much
5 anymore.

6 Q. How long have you been doing that?

7 A. 13 or 14 years.

8 Q. Let's take a look at one of your recent
9 articles. Dan, can you drop in the Tab 5?

10 MR. SEARLES: I'm having trouble
11 downloading this one.

12 MR. ISAACS: Uhm, I just dropped it in.
13 Is anyone else unable to download it? I can e-mail
14 it to you, Don. But is anyone else having trouble?

15 MR. SEARLES: Professor Solomon, are you
16 able to open it?

17 THE WITNESS: I am.

18 MR. ISAACS: Don, I'll send it to you in
19 an e-mail now.

20 MR. SEARLES: All right. Thank you.

21 MR. GOTTLIEB: Q. We can do the
22 preliminary boring stuff while you're waiting for
23 that.

24 Professor Solomon, do you recognize this
25 document?

1 A. Yes.

2 Q. What is it?

3 A. It appears to be a column that I wrote for
4 the New York Times back in June.

5 Q. When you wrote this column, had you yet
6 joined the board of Social Capital 4?

7 A. No.

8 Q. Had you been approached to join the board
9 of Social Capital 4?

10 A. No.

11 Q. Let's look at the middle of page 4.
12 There's a -- in a paragraph that starts, "Are they,
13 question mark."

14 Do you see that?

15 A. I do.

16 Q. So right after that you say, "SPACs are
17 bringing riskier companies to market. Stock market
18 101 suggests that with more risk come more reward
19 and more failures. Should investors be exposed to
20 these sorts of companies, which are inherently
21 riskier, make your own judgment. But it wasn't long
22 ago when people were worried about start-ups staying
23 private for too long depriving public investors of
24 exposure to potential gains. Now that the SPAC
25 solves this problem, regulators are backpedaling."

1 Do you see that section?

2 A. I do.

3 Q. Do you have an opinion as to whether it's
4 generally good for the market to bring riskier
5 companies to market?

6 MR. SEARLES: Objection; relevance.

7 THE WITNESS: No, I haven't thought about
8 it.

9 MR. GOTTLIEB: Q. Do you think SPACs are
10 inherently riskier than non-SPACs?

11 MR. SEARLES: Objection; incomplete
12 hypothetical.

13 THE WITNESS: No, I mean I think the point
14 that I'm trying to make in this article is that in
15 general SPACs, certain SPACs, have brought earlier
16 stage companies to market. Earlier stage companies
17 inherently have volatility. And so when you assess,
18 it's more like a venture capital company where more
19 will fail, but the bigger hits will be bigger hits.
20 And so this is sort of commenting on what's been a
21 20-year debate about what type of companies should
22 be public and since Sarbanes-Oxley, the push to sort
23 of bring more companies public.

24 And I've written on these issues. And to
25 the extent that certain SPACs are bringing earlier

1 stage companies to market, uhm, there will be more
2 volatility in their earnings. And to the extent
3 that they're bringing smaller companies to market,
4 there will be inherently more failures. And so this
5 is really a commentary on, uhm, a recent article by
6 Michael Klausner and -- I forgot his name --
7 Ohlrogge where they say that SPACs historically
8 haven't had great returns. But the problem is that
9 they don't look at the risk and the size.

10 So there's a risk reward analysis. None
11 of this is relevant to this case that I can see, but
12 that's generally what the point is that I'm trying
13 to make there.

14 MR. GOTTLIEB: Q. If a -- if a company
15 that is taken public by a SPAC fails, is that
16 necessarily because of fraud?

17 A. No. But if the company commits fraud,
18 they commit fraud. I don't -- I don't really see
19 the relationship between the two.

20 Q. Let me talk about SPACs just to set some
21 vocabulary for a second. So we've been talking
22 about the SPAC. Is SPAC the term used to refer to
23 public company that is acquiring the target company?

24 A. Yeah, in general. I mean the SPAC is a
25 special purpose acquisition company. I talk about

1 it in the background of my report. It's -- it
2 raises capital. It then has a period of time to do
3 a transaction. What is generally referred to as the
4 de-SPAC transaction, where they acquire a company, a
5 private company, and take it public.

6 Q. Is there a word commonly used to describe
7 the -- the company that is acquired, like target
8 company or something else?

9 A. I don't really know. I mean I refer to it
10 as target. If there's another term, I'm happy to
11 hear it.

12 Q. No, this is really just to get some
13 vocabulary. I'm fine with referring to it as the
14 target company.

15 A. That's how -- that's how I refer to it.

16 Q. Okay. Have you ever represented -- as a
17 lawyer in private practice, have you ever
18 represented a target company in connection with an
19 acquisition by a SPAC?

20 A. I've represented a target company that's
21 been acquired by a publicly traded company. That's
22 no different. So, uhm, when I was practicing, there
23 weren't SPACs. SPACs were sort of a -- a back
24 market thing, but there's no difference between the
25 issues about a SPAC acquisition versus an

1 acquisition of a private company by a publicly
2 traded company. That's really what's going on.

3 Q. Have you ever served as a director or
4 officer of a target company in connection with an
5 acquisition by a SPAC?

6 A. No.

7 Q. Have you ever served on the board of
8 directors of a public company, SPAC or otherwise,
9 that completed a merger or acquisition?

10 A. No.

11 Q. Have you ever represented or advised
12 members of a Board of Directors of a -- an FPI that
13 was acquired by a U.S. SPAC?

14 A. Again, I've -- I've certainly advised many
15 FPIs that have been acquired by U.S. publicly traded
16 companies, but not by a SPAC, no.

17 Q. How many transactions have you been
18 involved with personally in which a U.S. SPAC
19 acquired a foreign operating company?

20 A. In terms of represented -- representation,
21 it's the same answer. I don't recall any
22 specifically. But, again, I've been involved in
23 U.S. publicly traded companies acquiring FPIs, both
24 private and public, in addition for stock or cash
25 consideration where SEC documents have been filed.

1 Q. About how many times did you represent a
2 target company that was acquired by any publicly
3 traded company?

4 A. Oh, I don't know. I mean, you know, I was
5 an M&A lawyer for nine years. So significant number
6 of times, 10 or 20, need to refresh my recollection.

7 Q. Did you speak with any investors in
8 Ability in order to prepare this expert report?

9 A. No.

10 Q. Did you speak with anyone at Cambridge in
11 order to prepare this expert report?

12 A. No.

13 Q. Did you speak with any members of any
14 industry to prepare this expert report?

15 A. No.

16 Q. Let's look back at your expert report.
17 I'm looking at page 34. It's Exhibit 3, again, the
18 list of documents considered. Do you see that? For
19 the record this is --

20 A. I do. I mean, for good or for bad, I just
21 note -- I don't think the pagination goes to 34. It
22 restarts, but I assume you're looking at the 34th
23 page of the PDF, which is Exhibit 3, list of
24 documents considered.

25 Q. You are -- you are correct. It is -- I'm

1 looking at page 34 of the PDF, Exhibit 3, list of
2 the documents considered. And the page number on
3 the bottom is 1. So we're -- as long as we're
4 literally on the same page, that's okay.

5 A. We are literally on the same page.

6 Q. Who provided you with these materials?

7 A. The SEC did.

8 Q. Did anyone other than the SEC ever provide
9 you with any background about this case?

10 A. No.

11 Q. Did anyone assist you in reviewing these
12 materials?

13 A. No.

14 Q. Did you read each and every word of all
15 the materials on this list?

16 A. I don't -- I don't really know what that
17 means. I mean I read through the materials and
18 focused on the material parts and the non-material
19 parts. I may not have read every word or otherwise,
20 but I read them.

21 Q. How do you know what's material and what's
22 not material?

23 MR. SEARLES: Objection; vague.

24 Incomplete hypothetical.

25 THE WITNESS: I don't even know how to

1 answer that. Are we talking about in the context of
2 the securities laws?

3 MR. GOTTLIEB: Q. No. I'm curious. You
4 just said that you read through these and you read
5 the material parts. How did you decide what parts
6 were material and what parts weren't?

7 A. I think you're misstating what my
8 testimony is. My testimony is I read through these
9 documents. And you had asked whether I read every
10 word for word, and I -- I did not. I don't want to
11 say either way because that's not how I read. When
12 I read, if there's a part that appears important to
13 me or significant, I read it more carefully. And as
14 I go through, I read. Sometimes I read quicker, and
15 sometimes I read slower depending upon how I see the
16 importance of it.

17 And I gauge the importance based upon
18 my -- you know, I've been doing this for 20
19 something years, almost 25 -- no, almost 30 -- 27
20 years? 28 years? And so I look at what's relevant
21 to these opinions, what's relevant to things that
22 are going on. So, for example, you know, would I
23 have read my own that -- first hour I spent on my
24 own qualifications, probably not as carefully or
25 as -- I don't want to use the word carefully because

1 that's not the right word. But it wouldn't be as
2 significant to me because I already know my
3 qualifications.

4 So when I read through things -- because
5 the record's copious here. It extends for tens of
6 thousands of pages. You know, I'm focused on the
7 points that are important for purposes of my opinion
8 and highlighting those in my mind.

9 Q. The first document listed here is the
10 SEC's complaint in the case. You do understand that
11 the information set forth in the complaint are the
12 SEC's allegations, right?

13 A. I understand what a complaint is and that
14 these are factual allegations that the extent
15 disputed would be -- need to be proven at trial to
16 the extent they're relevant for the claims that are
17 made, the causes of action, to prove those causes of
18 action.

19 Q. Did you assume that any of the allegations
20 in the SEC's complaint were factually true?

21 MR. SEARLES: Objection; vague.
22 Incomplete hypothetical. For what purpose?

23 THE WITNESS: Yeah, I think I'd need to
24 know what we're talking about here and what fact
25 we're referring to. Did I assume that they were an

1 Israeli company? I just don't -- if there's a
2 specific fact you want me to look at, I'm happy to.
3 But, again, I'm not here to make conclusions based
4 upon the facts. And my opinions are not here to be
5 given -- to give factual conclusions.

6 MR. GOTTLIEB: Q. Let's turn to -- did
7 you read the answer in this case? I don't see it
8 listed in this -- in this list of the documents
9 considered.

10 A. I don't recall either way. But if it's
11 not listed, I don't believe that I did.

12 Q. Let's look at -- back to page 5 of your
13 report where there's a factual background section.
14 Starting at Paragraph 13.

15 Do you see that?

16 A. Yes, I provide a factual background -- a
17 brief, factual background of the case for purposes
18 of context the report. But my opinions are not
19 dependent on this factual background, and it's not
20 something that I would testify to.

21 Q. Where did you get the facts for this
22 factual background?

23 A. Well, it's footnoted. I mean, it speaks
24 for itself. Is there a particular sentence you
25 would like to go to. And generally the record, of

1 course.

2 Q. Well, wait, those are -- those are two
3 different answers. The footnotes part I understood.
4 Is there anything in here that's from generally the
5 record as from -- as opposed to any one of the
6 specific sites in the footnotes?

7 A. I think we're being sort of -- I think
8 you're dancing angels on the head of a pin. I mean,
9 I've read the record so -- that it's listed that
10 I've considered. And so that's informed what I'm
11 writing here, but the specific factual statements
12 are footnoted to specific sources. So, again,
13 there's a specific statement you'd like to discuss,
14 I'm happy to do so.

15 Q. Did you write this section yourself?

16 A. I wrote the whole report myself.

17 Q. Did you receive a draft of this section
18 from anyone else?

19 A. No.

20 Q. Do you have an opinion one way or the
21 other as to whether the facts set forth in this
22 section are true or not?

23 A. Uhm, again, it's not relevant to my
24 opinion. But I do have opinions about whether
25 they're true or not. I mean, these are cited to

1 primary sources for the most part. Is there any
2 dispute that Aurovsky and Hurgin didn't consent to
3 the use of their names in their registration
4 statement? My understanding is that these are --
5 the facts that I'm detailing here are undisputed
6 facts. If there's a specific fact that you would
7 like me to consider, again, I'm happy to.

8 And, again, none of these are -- depend
9 upon my opinions. I have made certain
10 conclusions -- certain conclusions about the record,
11 but I'm not opining on those here. They're not
12 relevant to my opinion.

13 Q. Just above the factual background, you
14 have a Section 4, still on page 5, says, "Summary of
15 opinions." And you say in this report, "I provide
16 information and background on the role of customs
17 and practices in M&A transactions involving SPACs
18 and FPIs in particular."

19 What's -- I'm sorry. Go ahead.

20 A. I'm just saying, yes. I see this, yes.

21 Q. Okay. What is the basis for your
22 statements about what are the customs and practices
23 in M&A transactions?

24 A. So I've been doing this, as I said for 27,
25 28 years. For now, both in practice, in writing

1 about M&A and transactions and disclosure, so
2 practice experience, I've been writing about it
3 academically and also for trade publications and
4 otherwise. I speak to the Delaware courts regularly
5 on these issues as well as the SEC on these issues.
6 I've been retained as an expert on these issues by
7 the SEC in this matter and other matters. I've
8 given expert witness on these cases and otherwise.
9 I regularly lecture and run conferences on these
10 issues. And in general, I just refer to my
11 background section.

12 Q. You're saying here that you're providing
13 information and background on roles of customs and
14 practice in M&A transactions involving SPACs, FPIs
15 in particular. We previously talked about the
16 number of matters that you handled as a lawyer
17 dealing with -- with SPACs. And I think that the
18 answer was that when you were practicing there
19 weren't really SPACs so that you did not have
20 experience with a SPAC in particular. Is that
21 correct?

22 A. I think you're mischaracterizing my
23 testimony, and I just refer back to it.

24 Q. Okay. Uhm, in how many SPAC transactions
25 did you speak firsthand with directors or officers

1 of a target to come to understand their practice of
2 reviewing, approving, or questioning SEC
3 disclosures?

4 A. I mean, I think I object to your
5 fundamental question the way that it's phrased.
6 When you're doing SEC disclosures in an acquisition
7 or pro form private issuer, it's no different for a
8 SPAC than it is for a target in a SPAC transaction
9 than it is for publicly traded company to acquire a
10 privately traded one and issue stock and for that
11 acquire to have a vote.

12 And so if there's some difference that you
13 would like me to address, I'm happy to. But I
14 regularly -- if we're talking about practice, I
15 regularly represented companies in these types of
16 transactions and practiced abroad with foreign
17 private issuers doing exactly this type of work for
18 four and a half years. And I've written repeatedly
19 about these issues and in particular about SPACs,
20 academically and otherwise. And my M&A case book is
21 the leading case book on acquisition transactions
22 and utilized at, not just Berkeley, but Stanford,
23 Columbia, other major schools.

24 And so these are issues that are generally
25 uniformed to FPIs and SPACs and, you know, as a

1 director of a SPAC right now, I know and see that
2 that is the case also.

3 Q. What's your basis for saying that there's
4 no difference for SPACs?

5 A. I just refer back to the prior answer.

6 Q. No. What's -- what is the basis on which
7 you say that there is no difference in the customs
8 and practices for officers and directors in a SPAC
9 versus a non-SPAC?

10 A. Again, I'd refer --

11 MR. SEARLES: With respect objection;
12 vague. What side of the equation are you talking
13 about?

14 MR. GOTTLIEB: Q. Either side.

15 A. Are we talking about disclosure
16 obligations? Because if we're talking about
17 disclosure obligations, I'm happy to answer that.
18 Is there a particular facet of the transaction that
19 you're talking about?

20 Q. Well --

21 A. Not -- I just -- I can't answer as counsel
22 objected. If there's a specific aspect you would
23 like me to look at, that's fine. But in terms of
24 disclosure obligation diligence and the agreements
25 that are signed, and there's no difference in

1 general or significant difference between the type
2 of acquisition transactions that I'm talking about.

3 Q. What is your basis for saying that there's
4 no difference?

5 A. Again, I refer back to my former answers.

6 Q. Well, we're talking about the customs and
7 practices of what officers and directors in certain
8 transactions do. You've said that you have not
9 represented officers and directors of a target in
10 connection with a SPAC. Is that correct?

11 MR. SEARLES: Objection; asked and
12 answered.

13 THE WITNESS: I think I've answered it,
14 but I'm not sure if I understand the question. But
15 if the question is have I represented a target that
16 is acquired by a SPAC and that target is an FPI, the
17 answer is no.

18 MR. GOTTLIEB: Q. Okay. So if you have
19 no experience representing such officers and
20 directors, how can you tell me that the custom and
21 practice for those officers and directors is any
22 different than in any other situation?

23 A. Again, I think you're -- you're
24 pointing -- you're trying to take one little fact.
25 I've spent, as I said, almost 30 years studying the

1 M&A market. I've written for the New York Times
2 about SPACs. I regularly lecture on SPACs. I've
3 written academically about SPACs. I speak on
4 conferences about SPACs. I just spoke recently with
5 Rob Jackson, the SEC commissioner, about SPACs and
6 how they work and other laws. I consult on these
7 issues. I've been an expert witness in SPAC cases.
8 My M&A case book deals with these issues. And,
9 again, I've practiced for 10 years doing these types
10 of issues.

11 So, again, there are some features of the
12 SPAC itself that are different. But when we're
13 talking about the disclosure obligations or how an
14 acquisition of a target works, there's no
15 substantive difference. And, again, I've been
16 studying these issues for a long period of time.

17 Q. I understand that you teach other people
18 about the customs and practices of directors and
19 officers in connection with SPACs. Where did you
20 come to learn that information?

21 A. So, again, you're mischaracterizing my
22 testimony and misstating it. Again, I regularly
23 speak at conferences with people. I do academic
24 studies of these issues. I speak to regulators on
25 these issues. I've represented companies on these

1 issues. I'm the director of a SPAC. And so, you
2 know, I write an M&A case book that is the textbook
3 and resource for these issues. And so I draw on all
4 those issues. And if there's something that's
5 different that you would like me to consider, please
6 let me know. But you haven't, and so I'm happy to
7 talk about a specific point if you'd like.

8 Q. Have you ever done a peer-reviewed study
9 of the customs and practices of directors of a
10 target of a SPAC in connection with their due
11 diligence obligations?

12 A. Again, no. That's not the way I think
13 about it. The question is have I written
14 academically on these issues and have these articles
15 been cited or otherwise. I've been writing about
16 SPACs since 2007 and been speaking on these issues
17 and viewed as an authority on these issues and was
18 appointed as a director on these issues. So, again,
19 I published in articles. If you call peer reviewed
20 being asked by journals to write them and being
21 reviewed by academics, then yes.

22 Q. None of that was responsive except for the
23 first word you said, which was no.

24 MR. SEARLES: Objection; argumentative.

25 MR. GOTTLIEB: Q. The question was have

1 you ever done a peer-reviewed study where you polled
2 a statistically significant number of directors and
3 officers of SPACs to review -- of targets in SPACs
4 to review what was their custom and practice in
5 diligencing any transaction or SEC filing?

6 MR. SEARLES: Objection. That wasn't the
7 prior question.

8 THE WITNESS: That's just such a specific
9 thing I can't even -- I mean I just refer to my
10 r?sum?. I mean I've done over 50 articles. I can
11 look through them and see where I've touched upon
12 those issues in a empirical study of such a niche
13 issue, which is not relevant to my reports. But I
14 can get back to you on it if you wanted me to look
15 through it while you wait.

16 MR. GOTTLIEB: Q. If I wanted to verify
17 that your views on what directors of SPAC targets
18 do, what is the custom and practice, how would I
19 verify that?

20 A. So, again, this is -- this is when
21 practitioners, for example, advise officers and
22 directors on what they do. They draw on their
23 knowledge and experience having done these
24 transactions before having studied these
25 transactions, speaking at conferences about these

1 issues to inform what the customs and practices are.
2 And so that's -- so, for example, when you have a
3 merger agreement, you don't just start it from
4 scratch. What you do is you take the form. You've
5 negotiated this before. You've studied this before.
6 And there are certain outcomes that come from the
7 form itself. And that's how customs and practices
8 is viewed.

9 And so these are informed also by the
10 National Association of Corporate Directors. And
11 so, for example, these are issues that directors
12 need to take up. And I've been named three times
13 one of the most influential people in the boardroom
14 by the National Association of Corporate Directors.
15 So you would look at guidelines from the NACD. You
16 look at guidelines from treatises. You look at case
17 books, like my case book that I did, and you draw on
18 the universe of transactions and the customs and
19 practices underneath the case law and how that
20 works.

21 Q. What is the basis for your statements
22 about what customs and practices in M&A transactions
23 involving FPIs are?

24 A. I just refer back. Sorry. I'm getting a
25 little bit frustrated because you keep asking the

1 same question. I just refer back to the answer that
2 I gave, which is, generally speaking, you look at,
3 uhm, how the disclosure is made, how the
4 transactions are. I've given -- I've filed expert
5 reports with respect to these practices on FPIs, and
6 you look at how directors and officers act. I've
7 done it with Israeli companies before too. And you
8 look at the same things that I've been talking about
9 over the past few questions.

10 Q. Is there a peer-reviewed study that you're
11 aware of that discusses what are the customs and
12 practices of officers and directors of SPAC targets
13 in conducting their diligence for SEC filings?

14 MR. SEARLES: Objection; vague and
15 ambiguous as to what you mean by peer reviewed.

16 THE WITNESS: I don't even know what you
17 mean by that. And I don't even know how it would be
18 conducted. Is there a particular type of study that
19 you would like to do that you'd like me to think
20 about? Again, there's a whole literature that I've
21 written in and on that looks at these customs and
22 practices. And if you're referring to that, yes.

23 But if there's a particular type of study
24 you'd like me to look at or otherwise or you think
25 should be done, I'm happy to do so. But I think

1 you're not sort of focused on how practitioners and
2 capital markets participants and regulators look at
3 these issues.

4 MR. GOTTLIEB: Q. I'm interested in how
5 directors and officers of FPI targets look at these
6 issuers. What is their custom and practice? And
7 what I'm asking you is what is your basis for expert
8 testimony on what their customs and practices are?

9 MR. SEARLES: Objection; asked and
10 answered repeatedly.

11 THE WITNESS: I'm just going to refer back
12 to my answer so we can read them back if you'd like
13 if there's something you'd like to focus on. We're
14 also coming up on the hour so I don't want to
15 interrupt you midstream on a question, but whenever
16 you want to take a break is great.

17 MR. GOTTLIEB: That's fair. Let's take a
18 break. We can -- we'll be kind. We'll take 10.

19 THE WITNESS: Thank you.

20 VIDEOGRAPHER: Off video at 10:54 a.m.

21 (The deposition was in recess from 10:54
22 to 11:08.)

23 VIDEOGRAPHER: Back on video at 11:08 a.m.

24 MR. GOTTLIEB: Q. Was Ability Computer
25 and Science a SPAC in 2015?

1 MR. SEARLES: You misstated the name of
2 the defendant.

3 MR. GOTTLIEB: Q. Was -- was ACSI --
4 A-C-S-I -- a SPAC in 2015?

5 A. If we're referring to the Israeli company,
6 no. It was a private company organized under the
7 laws of Israel.

8 Q. Was it an FPI in 2015?

9 A. Uhm, yes and no. I mean it wasn't
10 publicly listed, but it was -- it would qualify as
11 an FPI.

12 Q. Why would it qualify as an FPI? Do you
13 have to be a public company to be an FPI, or is any
14 company FPI? A foreign company an FPI?

15 A. Well --

16 Q. I'm sorry. That was a terrible question.
17 Let me ask it a better way. What's an FPI?

18 A. I just refer to my report. I think I
19 dropped it in a footnote what the definition is. So
20 maybe we can just turn to that.

21 Q. Well, sure. On Paragraph 3, you reference
22 FPIs. Then you have, "A foreign private issuer is
23 any foreign issuer, other than a foreign government,
24 except for an issuer meeting the following
25 conditions." And there are some conditions there.

1 Do you know -- do you count what was the
2 Israeli company, ACSI, an FPI in 2015?

3 A. I think so, yes.

4 Q. All right. Let's -- let's turn to page 13
5 of your report. And in particular let's look at the
6 opinions section. Okay. So your -- your Opinion 1
7 is, "Customary and usual practice for executive
8 officers and directors to be knowledgeable of
9 federal securities laws applicable to public company
10 M&A transactions and to review the relevant SEC
11 disclosure documents."

12 Do you see that part?

13 A. Yes.

14 Q. Does your opinion address how
15 knowledgeable of federal securities laws such
16 officers and directors have to be?

17 MR. SEARLES: Objection; vague and
18 ambiguous.

19 THE WITNESS: I don't really know how to
20 answer that. Can you be more specific, please?

21 MR. GOTTLIEB: Q. Well, you say it's
22 customary and usual practice for executive officers
23 and directors to be knowledgeable of federal
24 securities laws. How knowledgeable?

25 MR. SEARLES: Objection; vague and

1 ambiguous.

2 THE WITNESS: Again, I mean I talk about
3 this in my opinion, so you want me to read my
4 opinion, I'm happy to. But I just -- sorry. If you
5 can be more specific.

6 MR. GOTTLIEB: Q. Well, there are
7 degrees of how knowledgeable a person can generally
8 be about a thing. Is that right?

9 A. It would help to have an example.

10 Q. You -- you are knowledgeable about biotech
11 companies, you, Professor Solomon?

12 A. I think I have some knowledge of it.
13 Sure.

14 Q. But -- but you may be less knowledgeable
15 than someone with a Ph.D. in biotech who's been
16 working at a biotech company for 30 years, correct?

17 A. On specific points, yes. I mean,
18 certainly the practices or procedures to actually
19 work with the technology.

20 Q. You don't have to have a biotech degree
21 to, say, serve on a SPAC looking for a biotech
22 target, right?

23 A. No.

24 Q. Is your view that a director has to be
25 knowledgeable enough to be comfortable that there's

1 nothing false or misleading in the relevant
2 disclosure documents?

3 MR. SEARLES: Objection; misstates his
4 opinions.

5 THE WITNESS: Again, I just refer to my
6 opinions. In general, the directors, in my
7 experience and my practice, study, and otherwise,
8 directors and officers of publicly traded companies
9 are knowledgeable of the material facts of their
10 disclosure documents, review those disclosure
11 documents, uhm, comment on those disclosure
12 documents, make sure that if they don't understand a
13 point they make comment on them.

14 And, you know, they're expected to comply
15 with these under, not just their fiduciary duties,
16 but customs and practices. And if they see an
17 inaccuracy in those documents, they have an
18 obligation to speak up after that review.

19 MR. GOTTLIEB: Q. In Paragraph 32, you
20 write, "I detailed a role a public company executive
21 officer and director plays in a transaction with
22 respect to review of relevant SEC disclosure
23 documents."

24 Is that right?

25 A. Yes, that's right.

1 Q. And to be clear, your opinion relates to
2 the customs and practices applicable to the officers
3 and directors of a public company, correct?

4 A. Uhm, or becoming public.

5 Q. Is that a distinction that you make in the
6 report?

7 A. I didn't think that I needed to make that
8 distinction. I think to the extent that you're
9 trying to make that distinction, I disagree. Any
10 time you're going public or filing public documents
11 or going to follow customary and usual practices,
12 and what I talk to in Opinion 1, they don't
13 change -- you don't get a pass because your -- if
14 anything, when you're going public there's a
15 heightened scrutiny because it's your first time
16 making those disclosures.

17 MR. GOTTLIEB: Q. Do you form an opinion
18 as to the customs and practices for the directors or
19 officers of a target company?

20 MR. SEARLES: Objection; misstates his
21 opinions. Draws a false distinction.

22 MR. GOTTLIEB: I'm just asking the
23 question.

24 MR. SEARLES: I'm just objecting to it.

25 THE WITNESS: I think I agree with the

1 objection. I think -- I don't know if I can do
2 that. But, uhm, I think you're making a false
3 distinction here. We're talking about the
4 obligations of officers or directors in connection
5 with an M&A transaction in filing documents with the
6 SEC that carry liability with them. Uhm, as well as
7 their obligations they're under in connection with
8 customary and usual practices.

9 And that's what that opinion goes to. And
10 I'd rather just qualify my answers by the opinion
11 itself rather than -- uhm, I think you're
12 mischaracterizing it. But I'm happy to try and
13 clarify things if there's something you don't
14 understand.

15 MR. GOTTLIEB: Q. So you're writing that
16 it's custom and usual practice for executive
17 officers and directors to be knowledgeable of federal
18 securities laws applicable to public company M&A
19 transactions. Where do you find this custom and
20 usual practice? And I shouldn't -- before you
21 answer that, I'll break it down because we have
22 asked and answered that generally. Let me break it
23 down more specifically.

24 Is that custom and usual practice set forth in
25 any law?

1 A. So I do think I've answered this, and
2 we're sort of breaking it down to a micro level and
3 I don't think that that's really how that works. It
4 works at the macro level that we were talking about
5 before the break. In general, of course, it's
6 informed by the law, but what we were talking about
7 before the break I just refer to my answers that I
8 gave prior thereto.

9 Q. Is there a statute that sets forth what
10 the custom and usual practice is?

11 A. In general it's informed by the law, of
12 course. So Section 11 liability, Section 14A
13 liability, you have liability standards. So, for
14 example, Section 14A is a negligence standard. And
15 so when we look to see what negligence is, I'm not
16 here to give a legal opinion or to opine whether
17 someone was negligent or not here. But there are
18 customs and practices that have built up to comply
19 and make sure that a director or officer is doing
20 their job, frankly, in terms of reviewing these
21 documents, making sure that their material correct,
22 reviewing them, asking questions, making sure they
23 understand them.

24 And I think taking a step back in
25 particular, you have a company like Ability where

1 you have an officer and director and 50 percent
2 shareholder and someone who is signing multiple
3 legal documents, including leasing a property to the
4 company as well as signing employment contract,
5 agreeing to become a public director going forward
6 of the U.S. publicly traded company. In my 30 year
7 experience, the expectation is and what they did,
8 and I never saw anything different, is they were
9 part of the process. They reviewed the documents.
10 They asked questions. If they didn't understand
11 something, they asked it. And this involved not
12 just domestic issuers, but foreign private issuers
13 where people were not familiar with the language.
14 And so there was an obligation to understand this
15 was a significant thing.

16 This is the United States of America and
17 there's federal securities laws, and they're
18 directors of companies in western fields with their
19 own capital markets, so they know that these issues
20 come to the forefront and they act accordingly.

21 Q. Do you remember what my last question was?

22 A. I'm sorry?

23 Q. Do you remember what my last question was?

24 A. I'm not going to repeat it back, but I'm
25 happy to have the court reporter repeat it back if

1 you don't remember it.

2 Q. No. No. I'm asking you do you remember
3 what my last question was? Yes or no?

4 A. I do.

5 Q. What was it?

6 A. I'm not going to -- it's not a memory
7 test.

8 Q. It's not a memory test.

9 A. Ask the stenographer to read it back if
10 you're going to ask me that question.

11 Q. You referred to Section 11. Does
12 Section 11 apply to directors or officers of a
13 target company?

14 A. Again, I'm not here to give legal
15 standards, but Section 11 has a strict liability
16 standard. And so it involves a process of making
17 sure that those -- that when you're doing an IPO,
18 for example, you're making sure that your disclosure
19 is true and correct to the extent that there's a
20 Section 12 liability. That's the same thing for
21 officers and directors. I know that neither one of
22 those is an issue in this case, but it's no
23 different than Rule 10b-5 or Section 17 or Section
24 14A.

25 Q. Do you know one way or the other whether

1 Section 11 applies to directors or officers of a
2 target company?

3 A. I'm not here to answer legal questions.
4 If you want to pull up the statute, we can go
5 through it. I mean, I'm not here to answer legal
6 questions about an inapplicable statute. If you
7 want to pull up Section 11, then let's go through
8 it.

9 Q. Does Section 14 apply to directors or
10 officers of a target company?

11 A. Again, I'd rather pull it up. But yes, it
12 can.

13 Q. It can?

14 A. Yes, it applies in this circumstance.

15 Q. It applies in this circumstance. What's
16 your basis for saying that?

17 A. I'm not here to make a legal case or
18 otherwise. Again, the causes of action in this case
19 are under Rule 10b-5 and under Section 14A and under
20 Section 17.

21 Q. Is custom and usual practice set forth in
22 any particular regulations under the 33 or 34 Acts?

23 A. So, again, I give a similar answer to what
24 we said about the law, which is it's informed by
25 those regulations. And so if you have rules, for

1 example, like Rule 10b-5, there are customs and
2 practices thereunder and that, you know, are
3 informed by what practitioners do to comply with
4 those rules. They're informed by organizations such
5 as the National Association of Corporate Directors.
6 They're informed by practitioner memos, by academic
7 study, by what people have done in repeat
8 transactions, and what they repeatedly do going
9 forward.

10 Q. In all the practical experience that
11 you've had, how many times did you personally ask a
12 director or officer if they had read and understood
13 every single word of a securities filing that was
14 filed with the SEC?

15 A. So, again, that's not -- you don't sit
16 there and interrogate your directors and officers in
17 the way that you're talking about. What you do is
18 you make sure that the documents are provided to
19 them. You make sure that they're summarized, that
20 there's discussion at the boardroom, or if they're
21 signing documents, that there's discussion and
22 Ability drafts are provided for comment and review.

23 So in this circumstance, you not only had
24 disclosure documents, you had a merger agreement.
25 You had other contractual documents. And so those

1 are provided and discussed and it's -- counsel will
2 make sure generally that those are provided, that
3 they're receptive to questions. Questions are asked
4 because these are important issues and everyone's
5 well-made aware of it. It's not five dollars at
6 stake. It's tens of millions, hundreds of millions.

7 And so in general when I was in the
8 boardroom and when I'm in the boardroom currently as
9 a director, the expectation is that you'll ask
10 questions and understand what's being made of you
11 and that the material documents and facts will be
12 provided to you. And if you don't think that you
13 have them or you think there's a mistake, you'll ask
14 questions and inquire.

15 Q. How do you make sure that a director or
16 officer understands everything that's set forth in,
17 say, a proxy statement?

18 A. So when you said that question you
19 emphasized the word "everything." And, again, the
20 role of the attorney and the role of the officers
21 and the role of everyone here is to make sure -- as
22 I said in the answer to a prior question -- is to
23 make sure that there's opportunity to ask questions,
24 that the documents are reviewed, that there's
25 opportunity for the executive to read them, to

1 understand them. If they don't understand them or
2 read them and the discussions, so summaries are
3 given at the boardroom. Summaries are given when
4 the documents are circulated. Uhm, and then if the
5 executive doesn't understand them, the executive
6 will customarily ask.

7 So I can't just, for example, say well, I
8 didn't -- I agreed to buy this house but I never
9 read the documents and so now I can't -- I'm not
10 responsible for buying the house. When you buy a
11 house you read -- you read what the price is. You
12 read the material terms. And the boardroom is
13 really no different. And, in fact, the expectations
14 are higher because there's a lot of money at stake.
15 That's particularly true when you have someone who
16 is an officer, a director of both companies,
17 controlling shareholders signing multiple
18 shareholder agreements as well as a merger
19 agreement.

20 In my experience, and what I've seen and
21 what's the fundamental presumption, uhm, when people
22 discuss this, is that if an executive doesn't
23 understand something, they will ask questions.
24 That's their job. That's their fiduciary duty, and
25 so I just -- I fundamentally disagree with your

1 presumption.

2 Q. I'm not really presuming anything, but
3 that's okay. Let's look at Paragraph 35 of your
4 report. "The economic role of disclosure under the
5 federal securities laws places officers and
6 directors in a key role to ensure the public company
7 complies with its disclosure obligations and makes
8 true and accurate disclosure. This obligates
9 directors, officers to serve a proactive role in the
10 disclosure process. One which not only involves
11 review of this disclosure but quote vigorous end
12 quote inquiry in order to ensure that the statements
13 in the disclosure are materially true and correct."

14 Do you see that?

15 A. I do.

16 Q. And then you have a -- a block quote from
17 two practitioners. That's Howard and Donovan,
18 correct?

19 A. Yes.

20 Q. All right. So this -- the idea that
21 you're voicing here in Paragraph 35 of a proactive
22 role in the disclosure process, you're not citing
23 any statute for that idea in this paragraph,
24 correct?

25 A. No, there's no statute that's cited.

1 That's correct.

2 Q. And you're not citing a regulation?

3 A. No, although this is drawn from my general
4 knowledge. If you're asking what I cite here, yes.
5 For example, I just gave a disclosure process
6 opinion for Teva. So I'm very familiar with Teva's
7 disclosure process. And I gave one for Novo Nordisk
8 also. And I reviewed their entire process, and it's
9 set up so that officers and directors are proactive.
10 They take a part. They review things sometimes at a
11 disclosure committee, sometimes at not. They have
12 the opportunity to ask questions and move forward.

13 And what this citation records is just --
14 not just that experience that I just said, but my
15 general experience as both a practitioner and
16 academic and my other experience.

17 Q. Well, what you're citing here is just John
18 Howard and Donovan. Do they cite any actual studies
19 of what directors and officers actually do to
20 fulfill their duties here?

21 MR. SEARLES: Objection; misstates his
22 report.

23 THE WITNESS: I don't recall either way.
24 If you pull up their memo, we can review it.

25 MR. GOTTLIEB: Q. The -- the disclosure

1 process that you're setting forth and that you
2 provided to Teva and others, is that what you would
3 call a best practices disclosure process? Like what
4 you think are the best practices that directors and
5 officers should observe in the disclosure process?

6 A. No. Again, I think these are customary
7 and usual practices. And what I'm saying is in the
8 context of both Teva, which is an Israeli foreign
9 private issuer and Novo Nordisk, they -- when I
10 reviewed this, their disclosure practices, the --
11 what this quote is citing was supported. They're
12 implementing that and that's what I see in over my
13 practice and my other areas that I refer to in
14 answering the last question, which I guess is the
15 same question now.

16 Q. Your opinion here does not cite anything
17 about Teva, correct?

18 A. I mean it talks about customs and
19 practices. And, again, as I said, my opinions are
20 informed by my experience. So it's informed by my
21 experience, and I do record that I -- Teva is one of
22 the matters I worked on, as in the exhibit.

23 Q. This paragraph doesn't talk about Novo
24 Nordisk, correct?

25 A. No.

1 Q. Paragraph 36, next paragraph, you're
2 citing another -- other academics. See this is
3 citing to Professors Sale and Langevoort, correct?

4 A. Yes, this is a citation of an article that
5 they wrote.

6 Q. And they say, "Importantly the core of the
7 theory is not just a disclosure requirement.
8 Instead, by requiring disclosures and officer and
9 director signatures on offering documents, the SEC
10 forces attention to the underlying details backed up
11 by the potential for a strict liability cause of
12 action in the public offering context."

13 Do you think that the standard here is a
14 strict liability standard?

15 MR. SEARLES: Objection; vague and
16 ambiguous by the reference to the word "here." What
17 are you referring to? This case?

18 MR. GOTTLIEB: Q. In this case, do you
19 think that if -- if Mr. Hurgin and Mr. Aurovsky --
20 let me put it this way.

21 Do you think if there are any mistakes
22 whatsoever in the disclosure documents that Hurgin and
23 Aurovsky are liable because there's a strict liability
24 standard that applies to them?

25 MR. SEARLES: Misstates the action.

1 Misstates the report. Misstates the standard of
2 liability in this case. Otherwise irrelevant.

3 THE WITNESS: Again, I'm aware that
4 Section 11 -- there's no Section 11 claim in this
5 case, which is the strict liability standard. But
6 that's not relevant to my opinions.

7 MR. GOTTLIEB: Q. So do you think that a
8 strict liability standard applies in this case?

9 MR. SEARLES: Objection; beyond the scope
10 of his report and his opinions.

11 THE WITNESS: I think that's vague. And I
12 mean in the interest of time, we should go through
13 the causes of action. They each have their own
14 elements, uhm, but strict liability as -- in the
15 interest of time because this is dragging, frankly,
16 none of the elements that are the causes of action
17 here have a strict liability component.

18 MR. GOTTLIEB: Q. Okay. In Paragraph
19 37, you cite another academic, Professor Sale again.
20 Uhm, then she says, "All directors should be fully
21 aware of company statements and sufficiently engaged
22 and active to question and correct inadequate
23 disclosures."

24 She doesn't say how much engagement is
25 sufficient here, does she?

1 A. I can't even answer that. I think, again,
2 you're sort of trying to overparse words "director
3 should be engaged."

4 Q. Okay. But that's not a strict liability
5 standard, at least not in this case?

6 A. Again, the causes of action here that I'm
7 aware of do not contain a strict liability standard.

8 Q. So really there's -- it's a matter of
9 degree, like, how much or to what extent directors
10 and officers must inquire or what they have to do to
11 fulfill their duties. Is that correct?

12 MR. SEARLES: Objection; misstates his
13 testimony.

14 THE WITNESS: No, that's incorrect. And
15 frankly the line of question's irrelevant to my
16 opinions.

17 MR. GOTTLIEB: Q. I would like you to
18 answer the question.

19 A. I said it's incorrect. You asked me the
20 question.

21 Q. There isn't a strict liability standard?
22 What's the standard?

23 A. Again, there's a legal cause of action,
24 and I'm not here to give testimony on the law. But
25 there is customs and practices that executives

1 engage in when you do publicly traded disclosure,
2 and across the board that's what I'm talking about.
3 And so for proxy statements, for annual reports, for
4 registration statements, executives need to be
5 engaged and are customarily and usually engaged
6 because this has liability. And the whole process
7 is designed to make sure that they're engaged and
8 they follow those customs and practices.

9 Q. So I read this article from -- from
10 Professor Sale and literally the first paragraph of
11 it she writes, "An officer or director may rely upon
12 the company's procedures for determining what
13 disclosure is required only if he or she has a
14 reasonable basis for believing that those procedures
15 have resulted in full consideration of those
16 issues."

17 Do you agree with that statement?

18 A. I'm not going to agree with the statements
19 that are not put up. If you want to put the article
20 up, I'll take a look at it and we can discuss it.
21 But I'm not going to -- I don't give opinions to
22 read articles or one sentence of it without seeing
23 the whole article in front of me.

24 Q. Do you think that one could have a
25 reasonable basis for believing that a company's

1 procedures result in full consideration of issues?

2 MR. SEARLES: Objection; incomplete
3 hypothetical.

4 THE WITNESS: I don't really know what
5 that means. I don't think someone has a reasonable
6 basis to not read the documents. I don't think
7 there's a reasonable basis for someone to say I'm
8 just not going to look at them. I don't think
9 there's a reasonable basis for someone to say if I
10 know that there is, uhm, material misstatements or
11 omissions in a document, I'm just going to ignore
12 them. And it's okay because well, you know, I know
13 I'm an officer or director and controlling
14 shareholder, but I just don't pay attention to it so
15 it's okay. That's just not how the world is set up.
16 And that's not how securities laws work. And that's
17 not how people customarily and usually engage.

18 If you want me to look at Professor Sales'
19 article and, you know, I've spoken on behalf of
20 Professor Sale about these issues and otherwise,
21 and -- I'm happy to do so. And I just prefer that
22 we look at the article itself rather than you
23 quoting it or maybe paraphrasing it. I just don't
24 know.

25 MR. GOTTLIEB: Q. It was a quote, but is

1 that what you think happened here, that -- that
2 people looked at the material -- material
3 misstatements and said I just don't care?

4 A. You'd need to be more specific. I have no
5 idea what you mean here. I have no idea what you
6 mean by people. Who are you talking about? Uhm,
7 and so I would be more specifics on that question.

8 Q. This is -- this is what you brought up.
9 I'm curious as to -- as to why you would say that,
10 you know, it's not reasonable to read a material
11 misstatement and just ignore it. Is that what you
12 think happened in this case?

13 A. So, again, I've reviewed the Aurovsky
14 deposition and his main -- his main point that he
15 says in the deposition is I didn't read anything.
16 So, again, it's not relevant to my opinions, but
17 yeah, I think that's not an excuse. And I think
18 that the system's set up so you're informed so you
19 know about things. And I think given that this is
20 not a hundred-thousand person operation, it's a
21 small operation. To think that he can just say when
22 he's signing all these documents or otherwise that
23 hey, I just didn't read anything. I just signed my
24 employment agreement and everything else and didn't
25 review -- and didn't know anything about ULIN or

1 otherwise. I find that problematical, frankly.

2 It's not relevant to my opinions, and I'm
3 not here to make factual conclusions. But since
4 you're asking me, yes. That's not in accord with
5 the customs and practices that I've seen. Uhm,
6 frankly I've never seen that. And I lecture -- I
7 lecture in Israel. I teach in Israel in law
8 schools.

9 I know what we teach. I mean I know what
10 we lecture in Israeli law schools. I mean I work
11 with Israeli companies. I'm supposed to be in
12 Israel next week for a conference at Tel Aviv, and
13 unfortunately they won't let me in the country,
14 which is unfortunate, but, you know, the
15 expectations are no different there. And, in fact,
16 they're probably higher because it's a more
17 regulated society.

18 Q. Are you providing that opinion on the
19 facts of this case?

20 A. No, that's not -- that's -- if I'm asked
21 by the judge to do so, I will. But that's
22 certainly -- that is not my opinion for purposes of
23 this report. I'm giving you my opinion because you
24 asked me.

25 Q. So looking back -- thinking back to this

1 concept that Professor Sale raises about relying on
2 a company's procedures for determining what
3 disclosure is required, is it reasonable for a
4 director to defer to companies' lawyers or other
5 experts to assist in reviewing prospective
6 disclosures?

7 A. So, again, I agree. Are we talking about
8 the -- which statement of Hillary Sale? The front
9 page one?

10 Q. Yes.

11 A. So can you put it up, please? I'm happy
12 to wait. But I prefer to see the whole quote in
13 front of me if I'm going to answer questions about
14 it.

15 Q. Here, I'll just -- just going to put this
16 one in the chat so everyone has it.

17 A. I want the whole article. I'm not going
18 to just --

19 Q. Okay.

20 A. I don't even know where that's from or who
21 it is or what it is.

22 Q. It -- it's literally --

23 A. You want to take a break and get the
24 article?

25 Q. It's literally the first paragraph of the

1 article that you are citing in your expert opinion.

2 A. And I have no problem answering questions
3 about it. The only thing I'm asking is that we have
4 the article in front of us so that we make sure we
5 have the whole thing. And like I said, I'm happy to
6 take a break if you want to get it. But I'm not
7 answering questions about an article that you're not
8 going to let me see and that you're not going to
9 give me context to.

10 It's just -- it's not how Hillary Sale
11 writes. It's not how I write. And like I said, if
12 you want to put the article in and mark it as an
13 exhibit. Feel free.

14 Q. Is a director entitled to rely on the
15 assistance of lawyers or experts in reviewing
16 respective disclosures?

17 MR. SEARLES: You're attempting -- Jason,
18 are you attempting to paraphrase what's in the chat
19 room now?

20 MR. GOTTLIEB: Q. No. I'm asking a
21 simple question.

22 A. So a director is entitled to act
23 reasonably in accord with customs and practices.
24 And as part of that, they can reasonably rely on
25 directors and officers who are part of their

1 informational duties. But it doesn't relieve them
2 of their ability to assess that independently, their
3 ability to reasonably rely on those issues in accord
4 with custom and practice, and their requirements
5 that they read documents and liaise and discuss
6 these documents.

7 And it doesn't -- and in accord with
8 custom and practice, sophisticated counsel and
9 transactions will provide those documents. They'll
10 provide drafts. They'll provide summaries. There
11 will be discussions at the board levels. And the
12 executive is not entitled to blindly do nothing.
13 They are entitled -- they are required, as Professor
14 Sale says in the quote that I put up, to engage with
15 management to make sure that there's accurate
16 disclosure, to review that disclosure, uhm, and to
17 operate from -- on that basis. And if they don't
18 understand something, there's an expectation that
19 they'll ask questions and move forward.

20 Q. Is it your opinion that the customs and
21 practices that you're talking about are required by
22 federal securities laws?

23 A. I don't even think I can answer that. I
24 mean, again, the issue is that there are customs and
25 practices that have been developed. And underneath

1 the federal securities laws, they're not legal
2 requirements. But they're informed by what the
3 legal requirements are and people typically adhere
4 to them. Sometimes they overlap with the legal
5 requirements. But in general when you're assessing
6 whether someone's conduct is customary and usual,
7 there are customs and practices that have been
8 associated with that.

9 And I am aware that at times when we've
10 looked at people's conduct and otherwise. We assess
11 them in this context in terms with their -- how
12 they -- with how they acted and whether they acted
13 in accord with those customs and practices.

14 Q. Are directors and officers permitted to
15 rely on their attorneys to advise them on how to
16 comply with federal securities laws?

17 MR. SEARLES: Objection; vague.
18 Incomplete hypothetical.

19 THE WITNESS: So I just go to the answer
20 two answers before, which is it's within the context
21 of reasonableness, within the context of
22 expectations, within the context of what they know
23 and don't know in their duty to be engaged and to
24 inquire.

25 MR. GOTTLIEB: Q. Is it customary for

1 directors and officers to rely on their attorneys to
2 advise them on how to comply with federal securities
3 laws?

4 A. Again, reasonable reliance. So the
5 attorneys would be providing information about the
6 federal securities laws. They would be providing
7 drafts of the documents. They would be providing
8 material issues. The executives would engage with
9 those issues. They would review the documents.
10 Uhm, they would sign off on them.

11 You know, again, typically you have a
12 process. Teva had a process. Novo Nordisk got a
13 process. There's a process in a transaction where
14 your going public, whether it's a de-SPAC
15 transaction or an IPO. And that's all building to
16 ensure that the executive or the officer or the
17 person signing agreements understands those
18 agreements, has input with them, is engaged with
19 them, and corrects any material terms or
20 misinformation in those documents.

21 Q. Is it customary for directors and officers
22 to rely on other people in the company, other
23 company personnel, to assist them with respective
24 disclosures in areas that are outside their area of
25 expertise?

1 MR. SEARLES: Objection; incomplete
2 hypothetical.

3 THE WITNESS: I think it depends.

4 MR. GOTTLIEB: Q. So just for an example
5 from your own experience, if you're the director of
6 a SPAC looking to acquire a biotech company and the
7 particular target provides technical information
8 that is outside your personal sphere of knowledge,
9 is it reasonable for you to rely on other people to
10 help you understand those things?

11 A. I think I need to know what the
12 information is. And obviously it's reasonable
13 reliance. It's not blind reliance. So I'd be
14 subject to -- under custom and practice, for
15 example, it's a key technology, uhm, you know,
16 the -- the custom and practice would be that I would
17 make sure that if I don't have the expertise to
18 examine it, that competent people are hired to
19 examine it. I'm asking the right questions. I
20 understand what they're saying and that they're
21 reliable.

22 Uhm, and I think it depends upon your
23 position. So if you're a controlling shareholder
24 and an officer and a director, uhm, reasonable
25 reliance in those circumstances is different than --

1 than what my reasonable reliance is because you're
2 involved in the day-to-day operations of the
3 company. You're a senior executive. You're --
4 you're one of the controlling shareholders. And so
5 you have to take that into account.

6 Q. Do you know any directors and officers who
7 are not lawyers who would not rely on lawyers to
8 advise them in connection with an M&A?

9 MR. SEARLES: Objection; speculation.

10 THE WITNESS: Too many knots in that
11 question. I'm sorry. Can you just repeat it or --

12 MR. GOTTLIEB: Q. I agree. It was too
13 knotty. Do you know -- let me ask it -- let me ask
14 it this way.

15 Do directors and officers typically retain a
16 counsel in connection with large M&A transactions?

17 A. So the only reason I'm pausing at your
18 question is you're saying do they personally retain
19 that? I mean, the company has counsel.

20 Q. Yeah, sure. Any lawyers. Personal
21 lawyers, company lawyers, any lawyers. Do they --
22 do they use lawyers?

23 A. Yeah, so the company will retain lawyers
24 and also, for example, if you have selling
25 shareholders, they might have their own lawyers or

1 they have their own. They rely on the company
2 lawyers to the extent that there's a conflict for
3 their own lawyers. In conflict of interest
4 transactions involving public companies, it's not
5 unusual for special subcommittees to be formed to
6 hire their own lawyers.

7 Uhm, but typically, yes, there are
8 certainly lawyers involved, and there may be
9 multiple law firms depending upon the type of
10 transaction.

11 Q. In your Opinion 1, you say it's customary
12 and usual practice for executives officers --
13 executive officers and directors to be knowledgeable
14 of federal securities laws applicable to public
15 company M&A transactions and to review the relevant
16 SEC disclosure documents to ensure they are not
17 false and misleading. But what type of SEC
18 disclosure documents are you referring to there?

19 A. In general, the main documents, the proxy
20 statement or tender offer estimate or registration
21 statement, if there's a press release or otherwise
22 significant announcement, some material terms.

23 Q. Does it mean reading each and every word
24 of every single disclosure?

25 MR. SEARLES: Objection; asked and

1 answered.

2 THE WITNESS: I think we started with
3 that. I'll just refer back to my answer we did in
4 the first hour.

5 MR. GOTTLIEB: Q. Does it also mean
6 reviewing statements made by consultants hired by
7 the public company, such as its auditors or fairness
8 opinion authors?

9 A. I'm not sure what you mean by statements.
10 But certainly when you get a fairness opinion,
11 there's a presentation and there's a duty -- uhm,
12 it's custom and practice to engage with the fairness
13 opinion provider and to ask questions about the law.
14 And that's no different than with a consultant.

15 Q. The question is is there a custom and
16 practice for directors and officers to read every
17 single word of the fairness opinion after it is
18 published?

19 A. Well, so a couple of things. So one is
20 what happens at the meeting is, generally speaking,
21 the investment banker will give a financial
22 presentation and that would be a PowerPoint that
23 typically, although not always, is provided prior to
24 the meeting. And then there will be a draft to the
25 fairness opinion that's circulated and given to the

1 board. And it is custom and practice to review
2 those in connection with the fairness opinion.

3 Q. Do --

4 A. Just go back to sort of the issues around
5 the Van Gorkom case back in 1980s.

6 Q. In a SPAC transaction, is it the custom
7 and practice for the target company officers or
8 directors to review the statements of consultants
9 hired by the SPAC?

10 MR. SEARLES: Objection; incomplete
11 hypothetical.

12 THE WITNESS: It really just depends. I
13 mean are these statements that are in the proxy?
14 Are these statements that they're utilizing? What
15 are the discussions? What's -- I just can't answer
16 that question without more facts. I also -- we're
17 sort of coming on the noon hour. So I just, again,
18 if -- I don't want to interrupt your questioning,
19 but if we could just keep that in mind for the
20 break.

21 MR. GOTTLIEB: Q. Yeah, I'll go a little
22 bit more and then we can take a lunch break. In
23 your experience, is it common for officers of a
24 company to be somewhat specialized in the subject
25 matter for which they are responsible?

1 MR. SEARLES: Objection; vague.

2 THE WITNESS: I don't really know what you
3 mean by that.

4 MR. GOTTLIEB: Q. Like is it common for
5 a chief financial officer to be more specialized in
6 finance and accounting?

7 MR. SEARLES: Objection. Vague.

8 THE WITNESS: Yeah, I mean I think
9 you're -- look, I mean, when you have officers, they
10 have titles and roles and responsibilities, whether
11 it's chief technology officer, chief financial
12 officer, or otherwise. But then obviously those
13 duties overlap. So if they're a director, they have
14 more responsibilities than that. They're signing
15 agreements or they're controlling shareholders.
16 They have even more responsibilities. And so it
17 really just depends.

18 Also, you know, in terms of disclosure
19 processes, typically these are involving the
20 significant officers of the company. Uhm, and so
21 because you want to make sure that they all have
22 input, to make sure that all the good disclosure is
23 done -- when I say good, I mean correct and
24 compliant disclosure and that there's no fraud being
25 committed or material misstatements or omissions

1 being made that would otherwise violate the federal
2 securities laws. So it really just depends.

3 MR. GOTTLIEB: Q. Well, we're talking
4 about customs and practices here. Is it the custom
5 and practice for a chief technology officer to be as
6 knowledgeable about the financials of the company as
7 the chief financial officer?

8 MR. SEARLES: Objection; incomplete
9 hypothetical. Vague. Ambiguous.

10 THE WITNESS: So, again, if this is a CTO
11 who's a director and controlling shareholder, I
12 would expect them to have similar knowledge because
13 their roles are different. Again, they may not know
14 the exact intricacies of specific accounting roles.
15 But for the material aspects of business, I would
16 have the expectation that they would have similar
17 knowledge of the finances.

18 MR. GOTTLIEB: Q. And would you expect
19 the chief financial officer to have similar
20 knowledge of the technology of the company?

21 MR. SEARLES: Same objection.

22 THE WITNESS: So, again, it -- it really
23 just depends. But in a technology company, remember
24 the CFO is drafting -- is part of drafting audited
25 financial statements. They're part of drafting

1 disclosure. They need knowledge of the contracts.
2 They need knowledge of the technology. They need
3 knowledge of the ownership. And the -- the -- the
4 process is collaborative, and it's designed so
5 everyone is engaging so that they're putting forth
6 all the material disclosure.

7 So, again, I wouldn't expect the CFO to
8 know how to code, for example. But the CFO, I would
9 expect and has been my experience, knows significant
10 amount about the technology and the material terms
11 and how it's worked and who owns it and its
12 prospects.

13 MR. GOTTLIEB: Q. So you -- you would
14 expect that the custom and practice for different
15 officers would be to have different levels of
16 expertise and knowledge about the areas of their
17 company?

18 MR. SEARLES: Objection; misstates his
19 testimony.

20 THE WITNESS: Yeah, I wouldn't summarize
21 it like that. I just refer back to my prior answer.
22 For some things, I would expect them to have the
23 same knowledge and for other things maybe not. But
24 on the -- on the material issues, I expect them to
25 have the same knowledge.

1 MR. GOTTLIEB: Q. Well, I mean, do
2 you -- you said that a CFO may not have to know how
3 to code. I mean does the CFO of Apple know how to
4 build an iPhone with his bare hands?

5 MR. SEARLES: Objection; argumentative.

6 THE WITNESS: You'd have to ask him or
7 her.

8 MR. GOTTLIEB: Q. Are the duties that
9 inure in public company directors and officers the
10 same duties as inure in controlling shareholders of
11 a private company?

12 MR. SEARLES: Objection; incomplete
13 hypothetical. Asked and answered.

14 THE WITNESS: What -- what duties are you
15 talk about? Legal duties? Talking about cust- --
16 how -- it's sort of in the air, so to speak. I'm
17 not sure of the relevance in my opinion.

18 MR. GOTTLIEB: Q. The duties to --
19 knowledgeable about every area of their company?

20 MR. SEARLES: Objection; misstates his
21 testimony.

22 THE WITNESS: I don't see how that's an
23 issue in this case. The issue in this case is
24 significant disclosure that's made by an officer, a
25 director, and controlling shareholder who put his

1 name on a proxy consenting to be put forward as
2 this. I think you need to flush out your
3 hypothetical a bit more for me to see the relevance
4 of it.

5 MR. GOTTLIEB: We can -- we can stop here.
6 Do you want to take -- let's go off the record
7 before we talk about time for lunch breaks.

8 VIDEOGRAPHER: Off video at 11:57 a.m.

9 (The deposition was in recess from 11:57
10 to 12:19.)

11 VIDEOGRAPHER: Back on video at 12:19 p.m.

12 MR. GOTTLIEB: Q. Professor Solomon, at
13 the time of the business combination between
14 Cambridge and Ability, did you know that the
15 publicly traded company was organized under the laws
16 of Delaware?

17 A. The publicly traded --

18 Q. The SPAC.

19 A. -- SPAC. Yes, I believe I was. Yes.

20 Q. Did you do any particular evaluation of
21 Delaware law as it might relate to the customs and
22 practices of executive officers or directors of a
23 public company?

24 A. Not really sure what you're talking about.

25 Q. Did you review Delaware law for guidance

1 as to what the customs and practices of an executive
2 officer or director of a public company should do?

3 A. Again, I'm really not sure how to answer
4 that because I didn't specifically review Delaware
5 law for this. I'm not here to give a Delaware law
6 opinion, but obviously there are customs and
7 practices in terms of corporate governance operating
8 under Delaware law and those inform what you do when
9 you do a disclosure -- when you do disclosure also.

10 Q. Are you aware that the holdco, the entity
11 that absorbed Ability, that the target company was a
12 Cayman's company?

13 A. Yeah, it didn't absorb it. I mean
14 basically it purchased the shares and so -- but yes,
15 I am aware. So that the hold -- the operating
16 company remained an Israeli company, and a publicly
17 traded company remained a Caymans Island company.

18 Q. Did you review Caymans law in connection
19 with your opinion?

20 A. I didn't specifically review any Caymans
21 law in connection with this opinion.

22 Q. I'm sorry. I -- I missed the answer. The
23 word got swallowed.

24 A. I didn't specifically review Caymans law
25 for purposes of this opinion. I didn't deem it

1 relevant.

2 Q. Okay. Thank you. And you know that ACSI
3 was an Israeli company, right?

4 A. Yes.

5 Q. Did you evaluate Israeli law in connection
6 with your opinion?

7 A. So, again, I didn't specifically review
8 Israeli law for the purposes of my opinion. Uhm,
9 again, I have background in Caymans Island law,
10 Israeli law, and Delaware law. So it's -- it's -- I
11 do have background and research experience in those
12 areas. But I didn't specifically review any laws
13 for these purposes, and I didn't -- I don't view
14 reliance on those laws as relevant for purposes of
15 my opinion.

16 Q. You're a U.S. qualified lawyer, right?

17 A. I am.

18 Q. Are you a Cayman qualified lawyer?

19 A. No.

20 Q. Are you an Israeli qualified lawyer?

21 A. No.

22 Q. We've been spending a lot of today
23 reviewing the basis for your opinion about customs
24 and practices in this first opinion. We looked at
25 some academic studies. Uhm, we covered laws and

1 regulations. I want to ask you about any kind of
2 empirical review.

3 And just very specifically, are you aware of
4 any empirical studies or reviews that say here are the
5 things that the directors of a SPAC target customarily
6 do to ensure that their SEC filings comport with U.S.
7 securities law?

8 MR. SEARLES: Objection; vague and
9 ambiguous as to the term empirical.

10 THE WITNESS: Couple things. So one is,
11 you know, I've done Israeli transaction. I've done
12 Cayman Island transactions. I've done Delaware
13 transactions. I'm the director of a Cayman Islands
14 company. You know, all these are probably similar
15 fiduciary duty laws. I think in terms of -- of what
16 you're talking about, I just don't know how you
17 would do that. I'm not aware of any such study for
18 regular fiduciary duties.

19 It's not just how we look at it or customs
20 and practices, what you're talking about. It's not
21 how lawyers do it. Lawyers don't do empirical study
22 when they're looking for the customs and practices
23 of how we negotiate a merger agreement or how
24 corporate governance works. So I don't know how
25 such a study would work or what would be done. I'm

1 not aware of such a study.

2 MR. GOTTLIEB: Q. In Paragraph 38 of
3 your opinion, towards the bottom of the paragraphs,
4 the top of page 16, you say, "To the extent M&A
5 documents are in a foreign language is a customary
6 and usual practice to have them translated if need
7 be."

8 How often did you see a full proxy statement
9 being translated in their entirety for a non-English
10 speaking director?

11 A. I don't -- I don't really know either way.
12 I mean we often translated key parts of documents
13 and key parts of disclosure documents. So I just --
14 I just don't know either way. But certainly if we
15 had an executive who is signing a document who
16 didn't speak the language, we would have it
17 translated.

18 Q. So if there was a 404-page proxy
19 statement, you would have the entire thing
20 translated word for word?

21 A. I don't know if you need to do that.
22 Again, I think this goes back to the line of
23 questioning we've already gone over, like why would
24 you need to consent to translate sort of the, you
25 know, who the lawyers are in the transaction. You

1 would translate the material terms that were
2 important that the executive looked at, and
3 obviously you would summarize them and you discuss
4 them.

5 Q. Who decides what the material terms are
6 for translation in a case like that?

7 A. It's a give or take. I mean so, again,
8 you're discussing these at the board level. You're
9 discussing these in both the native language and the
10 other language. And so the parties are discussing
11 what's important or whatnot. Certainly things like
12 key contracts, key financial disclosures, roadshow
13 presentations, other things you would translate.

14 Q. And who decides what's a key contract or
15 key financial disclosure?

16 A. I think there is a give and take. So,
17 again, you know, it's you're representing -- you
18 know, there's key contracts. There's a materiality
19 threshold within the SEC rules. In this case,
20 there's a merger agreement threshold also. So you
21 look at the circumstances of where you were.
22 Certainly think if your key technology is subject to
23 contractual commitment, the disclosure around that
24 would be translated to the extent the executive was
25 saying that they didn't understand it or didn't

1 speak the language or otherwise.

2 And, of course, they would be -- because
3 they're signing these documents, they're under that
4 affirmative obligation to -- to do that, to express
5 if they didn't understand something or otherwise.

6 Q. Who decides whether the technology is key
7 technology?

8 A. So, again, there was a give and take.
9 There's a discussion. It's not one individual.
10 There's discussion at the board level. There's
11 discussion between the executives and the lawyers
12 and the investment bankers. There's discussion
13 between the target and the buyer, and it comes about
14 in various circumstances including the proxy
15 disclosures, merger agreement, the disclosure
16 schedules to the merger agreement, uhm, and those
17 areas. But there's a process where everyone's
18 involved and everyone has obligations.

19 Q. So if you had a situation where none of
20 those people you mentioned, the officers or
21 directors, the lawyers, the bankers, the advisors,
22 if -- if you had a situation where nobody thought
23 that a particular piece of technology was key tech,
24 is that something that you would expect would be
25 translated and reviewed by everyone anyway?

1 A. There's a lot of assumptions in that -- in
2 that question, and I just can't answer it. I know
3 you have a technology that, for example, you call
4 game changing to investors. There would be a give
5 and take about what the disclosure is around that.
6 But is there are specific factual situation you
7 would like me to consider?

8 Q. No. Let's move on. Let's talk about your
9 second opinion. So let's move to page 17.

10 A. Sure.

11 Q. So just so that we have it in the record,
12 Opinion 2, "A controlling shareholder, director, and
13 executive officer of a publicly traded company would
14 be expected under customary and usual practices to
15 be knowledgeable of the company's finances, sales,
16 and contractual arrangements and to be able to
17 review and sign off on SEC disclosure related
18 thereto."

19 Does your opinion relate to the customs and
20 usual practices for officers and directors of a public
21 company?

22 A. Well, it's about -- it's concerning
23 disclosure. So -- and so it's a publicly traded
24 company or a company that's going public and filing
25 those documents. I suppose we could talk about

1 private companies too, but that's what this opinion
2 is directed.

3 Q. In Paragraph 42, you write, "Directors and
4 officers customarily and usually have extensive
5 knowledge of the operations of the company, and
6 there is an expectation that these officers and
7 directors will have such knowledge."

8 There is an expectation that these officers
9 and directors will have such knowledge. Whose
10 expectation are you referring to?

11 A. These are market expectations. They're
12 customs and practices. So they're generally the
13 obligations that executives, directors, and officers
14 have both legally and what investors expect of them
15 and what the practices are in terms of their
16 organizational behavior and operations within the
17 company itself.

18 Q. But, again, there's no statute or
19 regulation requiring particular levels of knowledge,
20 is there?

21 A. I don't think that's true. I mean that's
22 not what this opinion goes to, but certainly you
23 have fiduciary duties to be informed. Certainly you
24 might have legal obligations otherwise to be
25 informed. But my opinion is going to the customs

1 and practices and what the market expectations are
2 of -- of those executives, officers who also happen
3 to be controlling shareholders.

4 Q. What -- what does extensive knowledge
5 mean?

6 A. In general, I think we're back to the
7 conversation we had in the second session. So I'd
8 refer back to those answers. But in general, they
9 know the material issues around the company. They
10 know, for example, if the company had a key
11 technology, whether they owned it, what the
12 arrangements were for it, what the financial
13 arrangements were for it, if they had the key
14 aspects of the revenue of the company, and how it
15 worked and otherwise.

16 Again, this is not a -- imagine you're
17 selling your house and you're walking through it and
18 you're like oh, I didn't know we didn't have an oven
19 in the kitchen. You're in the house every day. How
20 could you see there's no oven? So, you know, these
21 are just common expectations of what these
22 individuals would have particularly in a smaller
23 company like Ability.

24 Q. What does operations of the company mean?

25 A. I just refer back to my prior answer. I

1 think you're deconstructing words at this point.

2 Q. You used words in a opinion. I'm
3 literally just asking you what they mean.

4 MR. SEARLES: And his prior answer
5 addressed that question, Jason.

6 MR. GOTTLIEB: Q. You're talking about
7 Opinion 2. We haven't talked about this yet. What
8 does operations of a company mean?

9 A. I guess I just ask that we read back my
10 prior answer. I think I answered it. If I didn't
11 answer it in that prior question, I'm happy to try.

12 Q. Rather than going back and searching
13 several hours of testimony, maybe you can just
14 answer what does operations of the company mean?

15 A. I'm not asking you to search several hours
16 of testimony. I'm asking you to go back three
17 minutes to my last answer and read it back.

18 Q. Okay. If you don't want to answer it,
19 that's fine. We can move on.

20 A. That's not what I said. So, as I said --

21 Q. I'm --

22 A. -- if you would like me to try and -- and
23 I -- if you want me to try and address it, I'm happy
24 to go back. But I'd appreciate if you didn't typify
25 what my answers are.

1 Q. I'm trying. I'm just -- I'm just
2 trying -- I'm just asking -- ask a question. I just
3 want you to answer the question. That's all.

4 A. And I'm doing so to the best of my
5 ability. I'm sorry that you're frustrated and
6 you're not getting the answers you want. But I'm
7 really trying to help you here, and I'm happy to
8 stay as long as need be to try to help you.

9 Q. It would -- it would be helpful if you
10 would just answer the questions I'm asking. Okay.
11 What does operations of the company mean in the
12 opinion?

13 A. Great. Could we read back my answer two
14 answers ago?

15 Q. Sure. Go ahead. Read back the answer two
16 answers ago and see if this works.

17 A. Thank you.

18 Q. And when it doesn't, please answer my
19 question.

20 (Record read by the reporter:

21 "ANSWER: In general, I think we're back to
22 the conversation we had in the second
23 session. So I'd refer back to those
24 answers. But in general, they know the
25 material issues around the company. They

1 know, for example, if the company had a key
2 technology, whether they owned it, what the
3 arrangements were for it, what the financial
4 arrangements were for it. If they had the
5 key aspects of the revenue of the company
6 and how it worked and otherwise.

7 Again, this is not a -- imagine you're
8 selling your house and you're walking
9 through it and you're like oh, I didn't know
10 we didn't have an oven in the kitchen.
11 You're in the house every day. How could
12 you see there's no oven? So, you know,
13 these are just common expectations of what
14 these individuals would have particularly in
15 a smaller company like Ability.

16 "QUESTION: What does operations of the
17 company mean?

18 "ANSWER: I just refer back to my prior
19 answer. I think you're deconstructing
20 words at this point.")

21 THE WITNESS: Again, I think that answered
22 your question. The operations of the company and
23 material aspects of the company account, there are
24 the contracts. They are the technology. They're
25 the finances. You know, knowing that you own your

1 key technology, knowing how it's developed, knowing
2 how it's disclosed, knowing your revenue sources,
3 knowing the certainty of your revenue and otherwise.

4 These are just basic functions concerning the
5 operations of the company that the expectation would be
6 a controlling shareholder or officer or director would
7 know and particularly someone who is off the rate in a
8 less than 20 person operation.

9 MR. GOTTLIEB: Q. So you're -- where
10 does this custom and usual practice come from? We
11 have asked these questions before. So I apologize
12 if we're revisiting anything, but I want to explore
13 where the practice comes from. It's not set forth
14 specifically in laws or regulations. Where do
15 customs and practices come from?

16 A. I think I'd refer back to my prior
17 answers. I think we spent a lot of time on this.
18 There's laws, and there's regulations. And when
19 practitioners look at things, when academics look at
20 things, they don't just start from scratch. So the
21 example I gave I think to one of the times you asked
22 this question, because it's been multiple times, was
23 in an M&A transaction you don't just start with the
24 merger agreement. You start with, you know, a form
25 and then people have been negotiating this. So you

1 draw on sort of the universe of what these terms
2 look like and where it applies.

3 Similarly, in a disclosure context or what
4 expectations are, there's customs and practices that
5 are formed by the laws as well as the norms,
6 accounting standards, other standards, and
7 otherwise. And those are how people implement them
8 and that's -- you know, I've given these opinions
9 before as I mentioned in Novo Nordisk or Teva.
10 They're disclosures processes and procedures that
11 directors and officers utilized to ensure that
12 they're engaged and appropriately acting to ensure
13 that material information is disclosed, that they
14 are -- understand the business, the disclosures, not
15 just drafted correctly but informatively.

16 Q. I'm not sure that answers the question,
17 which is where does this custom and practice come
18 from?

19 A. I don't -- I think I answered the
20 question. If I don't understand it, I apologize.
21 But I think I answered the question. If you want to
22 try and ask it a different way, feel free to try and
23 I'll try and help. But I don't -- I don't really
24 understand how you think that I didn't answer the
25 question.

1 Q. Well, you know, you've said that these
2 customs and practices are informed by or influenced
3 by statutes and regulations. I'm paraphrasing and I
4 think that's -- I agree with that, whatever that's
5 worth. But informed by is not the same as required
6 by. And I'm asking you what requires these customs
7 and usual practices? Where does that requirement
8 come from?

9 MR. SEARLES: Objection; misstates his
10 testimony. Vague and ambiguous.

11 THE WITNESS: Again, I don't -- if you're
12 saying is there a legal requirement that you follow
13 certain customs and practices, again, it's informed
14 by that. And it's how practitioners act, implement
15 the laws and everything in the laws, and it's
16 reflected. I guess when you're saying where does it
17 come from, I sort of will repeat part of my answer.
18 But it comes from how practitioners interact, their
19 understanding of the laws, how academics interact
20 and write about these things, uhm, how people
21 studied these things, pronouncements by the NACD,
22 practitioners memos.

23 Basically that's what I've done for the
24 last 30 years, which is sort of a -- read these and
25 absorb these and actually practice these customs and

1 practices and advise on these customs and practices.

2 So, again, I'd also incorporate my prior answers
3 because I've touched on those before.

4 MR. GOTTLIEB: Q. If an officer or
5 director does not perform that custom and practice,
6 have they necessarily violated securities laws?

7 MR. SEARLES: Objection; incomplete
8 hypothetical.

9 THE WITNESS: I'd need -- I'd need more
10 information. Again, I'd need to know what the
11 standard is, what they actually did. It's -- just
12 need more information.

13 MR. GOTTLIEB: Q. Well, is it possible
14 in a particular case for someone to deviate from
15 whatever the custom and practice is and still have
16 acted responsibly and legally?

17 MR. SEARLES: Objection; vague and
18 ambiguous. Incomplete hypothetical.

19 THE WITNESS: Again, I think I need -- I
20 need more information. If you're saying that, you
21 know, an executive officer or director, shareholder
22 can simply decide I'm not going to read the
23 documents, then that clearly, to me, is both a legal
24 violation and a violation of custom and practice.
25 There's another factual pattern you would like me to

1 consider, I'm happy to consider it.

2 But, again, I'm not here to make
3 conclusions about law or facts. I'm here to give
4 the customs and practices and those do inform
5 expectations of conduct and how officers, directors
6 are expected to act particularly when they're
7 involved in disclosure or consenting to the use of
8 their name in registration statements or providing,
9 you know, auditors letters or otherwise.

10 MR. GOTTLIEB: Q. Let me give you
11 specific examples. Let's say somebody misses a typo
12 when they're reviewing a prospectus. They read the
13 whole thing. There was a typo in it. They missed
14 the typo. Does that necessarily violate the law?

15 MR. SEARLES: Objection; incomplete
16 hypothetical. Beyond the scope of his opinions.
17 He's not offering legal conclusions here.

18 THE WITNESS: I'm not sure it violates
19 custom and practice, well, on the law. So what's
20 the nature of the typo? What is it? What were they
21 reading? So I just can't answer that, but it's
22 not -- doesn't necessarily violate the custom and
23 practice or the law.

24 MR. GOTTLIEB: Q. Does every single
25 officer or director of a public company have to know

1 each and every detail of the company's finances?

2 MR. SEARLES: Objection; vague and
3 ambiguous. Incomplete hypothetical. Asked and
4 answered.

5 THE WITNESS: Yeah, I mean you've asked
6 this question about three or four times so I'm just
7 going to refer back to my prior answers.

8 MR. GOTTLIEB: Q. Okay. Again, I'm
9 asking these questions. Uhm, they're generally
10 somewhat different. You're answering questions --

11 MR. SEARLES: Can I object to that, Jason?

12 MR. GOTTLIEB: Q. You're answering
13 questions that you think that I'm asking, but you're
14 not necessarily asking the question that I'm asking.
15 So I would just ask you let me ask the questions.
16 You can answer the questions. And it's fine.

17 MR. SEARLES: And I can object to the
18 question that the extent they're the same.

19 MR. GOTTLIEB: Absolutely. You can say
20 asked and answered to your heart's content and
21 then --

22 MR. SEARLES: Thank you, Jason.

23 MR. GOTTLIEB: Q. And then I'd like you
24 to answer my question. I promise you it will
25 probably make this go faster.

1 Must every single officer and director of
2 a public company know each and every detail of the
3 company's finances?

4 MR. SEARLES: Objection; vague and
5 ambiguous. Incomplete hypothetical. Asked and
6 answered.

7 THE WITNESS: I'm happy to answer it, but
8 I think I've answered it. And it might help me if
9 you tell me how it's different so then maybe I can
10 try and answer it differently if there's a different
11 answer.

12 MR. GOTTLIEB: Q. I don't want to have
13 meta debates about my questions. I'm going to ask
14 you questions. You're going to answer the
15 questions. That's was the rule of the deposition
16 that we agreed to right at the beginning. Please
17 listen to the question. I'll ask it --

18 A. And -- and -- and I'm sorry to interrupt.
19 But you asked me to speak up if I don't understand
20 the question, and I've sworn to answer the questions
21 fully, truthfully, and correctly. And I don't
22 understand how this question is different than your
23 other questions. And if you can't answer that,
24 that's fine. But I just -- I'd like to try and
25 answer your questions, but it doesn't seem like

1 there's a difference between your questions. So in
2 order for me to answer them truthfully and fully,
3 can you please help me out and let me know how
4 they're different?

5 Q. You're working really hard to understand
6 differences and strategies. Just answer the
7 questions, please.

8 MR. SEARLES: Objection; argumentative.

9 MR. GOTTLIEB: Q. Does every single
10 officer and director of a public company know each
11 and every detail of the company's finances?

12 MR. SEARLES: Same objections.

13 THE WITNESS: So I just incorporated my
14 answers from before. And what I said before was of
15 course they don't need to know every single detail
16 of everything. You don't know every single detail
17 of your house. But if you're walking around and the
18 oven isn't there, you should -- you would presume to
19 know the oven isn't there. And similarly, when you
20 have officers and directors and controlling
21 shareholders who are involved in disclosure and
22 disclosure matters, there is an expectation that
23 they'll engage with the lawyers, with the other
24 officers, the other directors to prepare that
25 disclosure to make sure that it's true and correct,

1 to make sure that the material circumstances are
2 disclosed, that they understand those material
3 circumstances. And that if they don't understand
4 something, that they acquire about it.

5 MR. GOTTLIEB: Q. Do you know whether
6 Israeli law permits a director to rely on experts or
7 others with knowledge in connection with information
8 about the company that may be outside the director's
9 personal knowledge?

10 MR. SEARLES: Objection; improper
11 hypothetical.

12 THE WITNESS: I think you're misstating
13 Israeli law to the extent I'm familiar with it. But
14 I don't know. I know that NOTE based upon the
15 Delaware law, but I want to look at the exact
16 provision if we're going to talk about it.

17 MR. GOTTLIEB: Q. I'm just asking
18 whether you know Israeli law permits that or not?
19 It's a yes or no question.

20 A. I can't answer it. I don't know either
21 way.

22 Q. Okay. Do you know whether Caymans law
23 permits a director to rely on experts or others with
24 knowledge in connection with information about the
25 company that may be outside the director's personal

1 knowledge?

2 A. I don't recall at this moment.

3 Q. Okay.

4 A. I think I've looked at that previously,
5 but I don't recall either way at this moment.

6 Q. In Paragraph 42 of your report, you're
7 writing, "Under settled customs and expectations,
8 controlling shareholders typically have significant
9 governance role in the corporation."

10 Whose expectations are you referring to there?

11 A. Expectations of capital markets
12 participants, expectations of the controlling
13 shareholders, expectations of the officers and
14 directors and those involved in the company.
15 Expectations of the other shareholders.

16 Q. And those customs and exceptions that
17 you're referring to here refers to shareholders of
18 public companies?

19 A. I think it's both. But certainly I think
20 Mark Zuckerberg, for example, he's a controlling
21 shareholder of Facebook. I think there's an
22 expectation he has a significant amount of
23 involvement in it. As well as an officer and
24 director.

25 Q. Is it possible that shareholders of a

1 small private company may conduct their affairs
2 differently?

3 A. I think there's less of an expectation for
4 that. I mean in a publicly traded company once
5 you're publicly traded, uhm, you have more
6 oversight, more issues. But in a small publicly
7 traded -- a small private company -- I mean if I had
8 a \$200 million company that I controlled, I think
9 I'd be involved in it substantially or at least be
10 knowledgeable about it. That's a lot of money, and
11 so I think the expectations are similar, but they
12 may be more acute.

13 Generally speaking, when you have
14 controlling shareholders of small companies, they
15 are what we call -- I mean they're entrepreneurs.
16 They're -- they're -- it's what we call closed
17 corporation where the officers, directors, and
18 executives are all overlap. And so the law looks at
19 those issues and has actually developed special
20 doctrines in those circumstances to allow for the
21 fact that the controller is often the one who is
22 sort of most intimately involved in the company
23 willing to act in those cases inappropriately or
24 oppressively is we call it towards the MRA
25 shareholders.

1 Q. These are all expectations of U.S. law?

2 A. No, I think these are capital markets
3 expectations. I think those are expectations across
4 the western world for any sophisticated capital
5 market.

6 Q. Are you --

7 A. I think -- I think that they run the same
8 in Israel as they do in Germany or the U.K. or the
9 U.S. And that's been my experience having -- over
10 the last 30 years or so. I guess 27 years.

11 Q. In Paragraph 44, you refer to the general
12 anti-fraud rules including Rule 10b-5. Let's see.
13 That may not be right. It's in the -- it's in the
14 footnote there, Footnote 82.

15 A. Yeah.

16 Q. So you're referring to -- let's just read
17 the sentence here so we're grounded. "U.S. law and
18 practices recognizes this expectation and
19 controlling shareholders of U.S. public companies
20 are subject to trading limitations under the federal
21 securities laws, which limit their ability to engage
22 in short term trading."

23 And that -- that is footnoting to -- is that
24 the right footnote? That's from Section 16 of the
25 Exchange Act. That's right. So you're referring to

1 practices from federal securities laws here, right?

2 That's from Section 16 of the Exchange Act. The next
3 sentence about trading role and possession material,
4 non-public information is from Rule 10b-5. You're
5 talking about obligations that stem from the federal
6 securities laws, right?

7 A. Yeah, in general I'm setting forth the
8 expectations of the federal securities laws, which
9 guide the expectations of investors.

10 Q. Right. Those are actually set forth in
11 the securities laws, right?

12 MR. SEARLES: Objection; vague and
13 ambiguous.

14 THE WITNESS: Not really sure what you're
15 talking about. Again, expectations of investors are
16 set by the laws sometimes and what the customs and
17 practices are. And so, for example, an insider
18 trading policies of a company -- publicly traded
19 company will have D&O questionnaires, which Mr.
20 Aurovsky filled out. And they'll have an insider
21 trading policy, which will implement and vary
22 depending upon custom and practice to implement,
23 uhm, the underlying principle that executives
24 shouldn't be trading on material non-public
25 information.

1 MR. GOTTLIEB: Q. But you can source
2 these in the federal securities laws themselves,
3 right? I mean, there's a limit on short term
4 trading in the securities laws.

5 A. Well, I'm --

6 Q. I can be a little bit more vague, but it's
7 sourced from 10b-5?

8 A. I think what I'm saying is it's broader
9 than that, the custom and practice. So one of the
10 sources, as I said before, can come from the law.
11 But then when you have an insider trading policy,
12 for example, many times it will limit putting your
13 shares on margin so that you don't have a sale that
14 would be triggered by insider information. If there
15 is a disclosure problem on -- you have broader
16 principles that apply around trading, you know,
17 whether or not you have a 10b-51 plan or otherwise.

18 And so investors generally expect
19 integrity in the markets. And the point that I'm
20 trying to make here is that there's an expectation
21 that investor -- that controlling shareholders have
22 material information in their possession. And one
23 of the reasons why that's regulated -- and that's
24 why one of the reasons that expectation is also
25 within the federal securities laws, but it's within

1 other areas. I think -- I have the expectation that
2 Mark Zuckerberg has material information about
3 Facebook that I don't have. And so that's -- that's
4 what this is talking to generally.

5 Q. And there would be customs and practices
6 around, say, insider trading laws, as you just said,
7 that a company might institute an insider trading
8 policy that is governed by customs or best
9 practices; is that right?

10 A. Yeah, in general I think, you know, there
11 are forms and it's not dissimilar to a merger
12 agreement or otherwise. It would be discussed at
13 the board level. It would be debated. They'll make
14 policy decisions between what other companies are
15 doing by looking at non-empirical study, but a
16 general sense of what other companies are doing.

17 Uhm, I apologize. I don't want to
18 interrupt your questioning, but I have to do
19 something at 1:00 for five minutes. So if we could
20 break soon, I'd appreciate it.

21 Q. We'll -- we'll break soon for that.

22 A. Thank you.

23 Q. If a company doesn't promulgate an insider
24 trading policy that conforms with whatever the best
25 practices and customs are, is that in violation of

1 securities laws?

2 MR. SEARLES: Objection; vague and
3 ambiguous. Ambiguous as to conflating customs and
4 practices with best practices.

5 THE WITNESS: In general, it depends. So
6 I may have missed the best practices point, uhm, but
7 in general it just really depends on what the policy
8 says and what it is. So it could be. It could not
9 be.

10 MR. GOTTLIEB: Q. If a -- if a company
11 never promulgates any particular insider trading
12 policy but nobody at the company ever trades on any
13 material non-public information, has anyone violated
14 the securities laws?

15 MR. SEARLES: Objection; improper
16 hypothetical. Beyond the scope of his opinions.

17 THE WITNESS: Yeah, I just don't know. I
18 don't know what the securities are. I don't know
19 where it is or otherwise. I mean certainly that
20 would be, you know, to me, for a publicly traded
21 company, we're looking to see whether they're --
22 they care about the risk, whether they're addressing
23 them, what the customs and practices are, engaging
24 in the expectations of their duties and otherwise.
25 So I wouldn't expect that any significant company or

1 publicly traded company today would not have an
2 insider trading policy.

3 MR. GOTTLIEB: Q. I guess --

4 A. The scope may vary. Uhm, and as I said,
5 you're right. It may or may not violate the federal
6 securities laws. But, again, the expectation is
7 that they would have one.

8 Q. But if they don't have one, is that in and
9 of itself a violation of the federal securities
10 laws?

11 MR. SEARLES: Objection; improper
12 hypothetical. Incomplete hypothetical.

13 THE WITNESS: The best I can say is I
14 don't know. I need more facts and circumstances. I
15 need to know what the trading is. I need to know
16 what the company is. I need to know what's being
17 done. There are lots of ways to violate the federal
18 securities laws. It would be, you know -- the fact
19 that you didn't have an insider trading policy seems
20 to me to be negligence. Seems to be -- you know,
21 scienter, and so that might inform things. But
22 again, it just depends.

23 MR. GOTTLIEB: Q. Here's the complete
24 hypothetical. I'll do it one more time. If not a
25 single person at the company ever traded any of the

1 company's securities ever, but the company failed to
2 have insider policy promulgated, would it have
3 violated federal securities laws with insider
4 trading?

5 MR. SEARLES: Objection; incomplete
6 hypothetical.

7 THE WITNESS: They might have. I mean
8 maybe they told their brother. Maybe they told
9 their sister. I mean, you know, there's 10b-5
10 extensions. There's state all-holders rules,
11 frankly. You know, holders rules, holders actions
12 in California and otherwise, those aren't federal
13 obviously. But, you know, I just don't know. I
14 mean if you're saying would they personally -- just
15 because I do have to go at 1:00 -- would they
16 personally violate a 10b-5 if they didn't personally
17 trade, uhm, as an insider trading, I don't think
18 they would have. You know, so that's -- that's the
19 best --

20 MR. GOTTLIEB: Q. That's fine --

21 A. -- I can give you without more
22 information.

23 MR. GOTTLIEB: Yeah, take your -- take
24 your -- let's take a break. Do you need 10 minutes?
25 10 is fine.

1 THE WITNESS: I just need five. But if
2 you want to take 10, that's fine.

3 MR. GOTTLIEB: Yeah, I'll take 10. All
4 right. See you then.

5 VIDEOGRAPHER: Off video at 12:59 p.m.

6 (The deposition was in recess from 12:59
7 to 1:14.)

8 VIDEOGRAPHER: Back on video at 1:14 p.m.

9 MR. GOTTLIEB: Q. Professor Solomon,
10 have you ever provided expert testimony for a
11 defendant accused of violating the securities laws?

12 A. Uhm, yes, yes.

13 Q. Can you tell me about that?

14 A. So well Teva and Novo Nordisk. I need to
15 refresh any recollection. But if you let me, I can
16 look at my list. But Teva and Novo Nordisk were
17 defendants in federal securities litigation. And
18 they were individuals there also. It was officers
19 and directors.

20 Q. Do you have written expert reports in
21 those proceedings that are -- are publicly
22 available?

23 A. I don't know either way. I mean, I know
24 the record's sealed so I don't think they are, but
25 you could view the record and see they're both in

1 federal court.

2 Q. Is your -- are your opinions there subject
3 to any kind of confidentiality agreement?

4 A. I mean, there's a stip. And I think it's
5 been sealed and they are subject to a
6 confidentiality agreement. So I don't recall
7 exactly, but they're not -- to my -- as far as I'm
8 aware, they're not publicly available. I'm not
9 permitted to disclose them, but they may be -- but
10 like I said, that's as far as I'm aware of. If you
11 did a search of the docket, you could see, but I
12 don't think it's -- the priors can be disclosed.

13 Q. Okay. I would call for the disclosure of
14 those opinions to the extent they are not covered by
15 a court stipulation sealing them. I'm obviously not
16 calling for anything that's -- that's sealed under
17 order of the court.

18 A. I will review the stip, but I think it's
19 sealed. But I defer to my attorney, but I'll review
20 it with -- not my attorney, I'll review to counsel
21 in this case and take their direction on it.

22 Q. Uhm, other than Teva and Novo Nordisk,
23 have you ever provided expert testimony for a
24 defendant accused of violating the securities laws?

25 A. I need to refresh my recollection. Do you

1 want me to do that?

2 Q. Yeah, let's just quickly flip to
3 Exhibit 2, which is the cases just from the last
4 four years.

5 A. So Teva was defendant. Ulisses was a
6 plaintiff. Modany was a corporate governance case,
7 but it was in bankruptcy denial of the securities
8 laws. Novo Nordisk we talked about. Razin was not
9 a federal securities law case, but it was a holder's
10 action. And that was for a defendant. That's it on
11 this list. There may be others before then, but I
12 don't -- I don't recall them either way.

13 Q. Okay. Let's look at Opinion 3. So let's
14 turn to page 19 of your statement.

15 A. Okay.

16 Q. And just for myself, I'll read it. "A
17 controlling shareholder, director, and executive
18 officer would not be expected under customary and
19 usual practices to be willfully blind in execution
20 of his or her relevant certifications and review of
21 the disclosure documents in a public company M&A
22 transaction," right?

23 A. That's what it reads. Yes, that's
24 correct.

25 Q. Just one thing I note. So looking at

1 Opinion 1 on page 13, this is geared towards the
2 customary usual practice for executive officers and
3 directors. And then Opinion 2 is directed towards a
4 controlling shareholder, director, and executive
5 officer of a publicly traded company. Similarly,
6 Opinion 3 is a controlling shareholder, director,
7 and executive officer. So in Opinions 2 and 3, are
8 you focused on individuals who are a controlling
9 shareholder, director, and executive officer?
10 Someone with all three of those roles?

11 A. Yeah, so I think on Opinion 2 it really is
12 an opinion that goes to someone who is also a
13 controlling shareholder as well as also happens to
14 be an executive officer. When we think about
15 Opinion 3, it's -- it can apply really across the
16 board. So it probably -- the "and" should probably
17 be an "or" in Opinion 3 and that's the way that it's
18 written, which is that, uhm, no -- none of these
19 parties would be expected to be willfully blind.
20 The fact that they have all three roles I suppose
21 makes it more egregious, but it's the same principle
22 that applies to each of them.

23 Q. In your view, in -- in Opinion 3, when we
24 say in a public company M&A transaction, are you
25 referring to transactions between two public

1 companies or between a public company and a private
2 company, a private company going public? All of
3 those? None of those? What were you referring to
4 there?

5 A. Uhm, generally a public company
6 transaction where disclosure documents are being
7 filed. There could be any of those.

8 Q. So are there any differences for what the
9 public company is required to do versus what a
10 private company involved in a transaction with a
11 public company is supposed to do?

12 MR. SEARLES: Objection; incomplete
13 hypothetical.

14 THE WITNESS: Well, again, there's
15 different documents. There's different
16 certifications. There's different issues. It
17 depends on the consideration being paid. So in a
18 situation where stock consideration is being issued
19 or a proxy statement being filed and disclosure
20 being made concerning the target, the principles
21 that I'm talking about would apply.

22 MR. GOTTLIEB: Q. In Paragraph 48, under
23 Opinion 3, you write, "While many of these documents
24 are drafted by counsel, ultimate source of the
25 information regarding the company is generally the

1 officers and directors who are acting on behalf of
2 the company and who are ultimately responsible for
3 the statements contained in the documents that they
4 sign."

5 Do you see that?

6 A. I do.

7 Q. What are we -- what are we citing there?
8 That -- that cite is to the Janus case, right?

9 A. It's a "see" example. So these are
10 examples where courts have said that, but that
11 generally is the expectation. In my experience and
12 study, that's the expectation. The officers know
13 the facts of the company the best. Directors, you
14 know, know them as well. Uhm, and that's the source
15 of the facts. So, for example, in the Ability
16 transaction, that's why you have audit letters that
17 Mr. Hurgin and Aurovsky signed so that the officers
18 and directors are providing relevant information to
19 auditors.

20 Similarly with an M&A agreement, when you
21 have an M&A agreement you're making reps and
22 warranties. In my experience, you sit down with the
23 executives. You go through them -- the disclosure
24 schedules, make sure the disclosure is appropriate.
25 Otherwise not -- that comes from the officers and

1 directors of the company.

2 Q. In a SPAC transaction, who is the maker of
3 the statements in the public companies proxy
4 statement?

5 MR. SEARLES: Objection; calls for --
6 calls for a legal conclusion.

7 THE WITNESS: I haven't thought about
8 that. I need to think about it in context of what
9 we're talking about and where they are. It just
10 varies. And if we're talking about a specific case,
11 I'll consider it. I haven't really considered it.

12 MR. GOTTLIEB: Q. Okay. In Paragraph 48
13 you also write, "Moreover, because these are
14 individuals with unique knowledge and engaged in the
15 commercial processes of the company, they are aware
16 that they have certain legal obligations as well as
17 obligations to adhere to custom and practice in the
18 implementation of their responsibilities."

19 At the risk of overrunning trod ground, what
20 are the legal obligations you're referring to here?

21 A. Well, the legal obligations of directors
22 and officers are their fiduciary duties. Uhm,
23 they're subject to those, of course. There can be
24 other legal obligations, including the disclosure of
25 federal securities law obligations in connection

1 with disclosures. Those are the two main ones.

2 Q. And then you see -- you're writing, "As
3 well as obligations to adhere to custom and practice
4 in the implementation of their responsibilities."

5 What is the source of those obligations to
6 adhere to custom and practice?

7 A. So in general, officers and directors just
8 don't suddenly appear in a company. They're
9 operating in the company. They're being advised by
10 advisors. They have processes and procedures for
11 disclosure. They have meetings. They have minutes.
12 So they know, for example, when you have a meeting.
13 There are minutes that are kept because that's done
14 again. And so the -- they know that they have
15 fiduciary duties because that comes up in the
16 context of being a board member.

17 And otherwise they know that public
18 disclosure obligations or conflict of obligations
19 because they fill out a D&O questionnaire. And so
20 we don't assume -- just like I'm walking around my
21 kitchen and I see all the appliances every day --
22 that executives and officers just come to everything
23 new and wake up and it's like Groundhog Day. In
24 fact, there's a history where they're acting within
25 a company. They're acting under their obligations.

1 They're aware that there are customs and practices
2 that are being done involving -- notes are involved.
3 And they're aware that if there's a change of
4 circumstance, they'll be new customs and practices
5 to reflect those circumstances such as, for example,
6 public listing in the U.S. when you're an FPI.

7 Q. Is there a source of these customs and
8 practices? Where would a director look if they
9 wanted to know what were the customs and practices
10 that they are supposed to adhere to?

11 MR. SEARLES: Objection; asked and
12 answered.

13 THE WITNESS: Yeah, I have answered that.
14 I, uhm, note that at least one person put their
15 hands over their head when you asked it. But, uhm,
16 I, again -- I just refer back to this. I'll answer
17 if you want, but it's the same answer given.

18 MR. GOTTLIEB: Q. No. This is a
19 specific question and a different question.

20 A. Sure.

21 Q. Where -- where would a director or officer
22 look to understand what is the custom and practice
23 in what they're supposed to be doing?

24 A. So, again, that's their advisors, their
25 experience, what they learn in terms of the market,

1 and how they've been -- they're approaching it. So,
2 again, that's the experience of a being an officer
3 or director. I think I did answer it in that prior
4 question. But so, for example, if you have an audit
5 restatement, you have to do a SAB 99 memo. Your
6 lawyers come to you. You deliberate this. You have
7 to do XYZ and you know going forward -- you know,
8 that's how you deal with those issues.

9 So that's what you do in a board meeting,
10 you know, that there are advisors there. They're
11 advising you. You have obligations. You have
12 fiduciary duties. You have other obligations. Uhm,
13 and so that's why there's been a real focus on
14 director training in the past two decades or so,
15 particularly from the NACD to ensure that directors
16 are aware of these from the get-go. But when you
17 have people who have been around for a while, uhm,
18 they learn them as they go and from their advisors
19 and otherwise. Particularly in a -- in a
20 significantly size operation in terms of net worth.

21 Q. What about someone who's never been a
22 public company director or officer before? Where is
23 that person supposed to learn what their customs and
24 practices should be?

25 A. They're supposed to ask. They're supposed

1 to know that they're new and they're not aware of
2 the customs and practices. And that if they have
3 disclosure documents sent to them, what do I do with
4 them, how do I understand them? What am I supposed
5 to do with them? They're certainly aware that there
6 are obligations that come with being a director and
7 they have responsibilities to learn about and
8 fulfill those obligations. And willful blindness is
9 certainly not the expectation let alone defense,
10 just like it's not an offense to.

11 I signed an agreement to sell my house for
12 a dollar, but I didn't read the contract so I
13 shouldn't be bound to it. It's just -- you know,
14 that's not the expectation. And particularly when
15 you have public companies, where there's significant
16 responsibilities and it's -- people know there's
17 significant responsibilities.

18 Q. Would a first time public company officer
19 and director be entitled to rely on experts that
20 they hire to tell them what the customs and
21 practices are?

22 A. Again, it's a reasonable reliance, and
23 it's not passivity or willful blindness. They have
24 a responsibility to question things, to review
25 things that they're signing, ask questions about

1 them. And so if the advisors told them nothing,
2 that wouldn't excuse them. I mean that's the
3 hypothetical, but you just don't blindly just go
4 ahead. That's not been my experience, frankly.
5 I've never actually seen that.

6 Q. I'm sorry. You've never -- you've never
7 seen what?

8 A. I've never advised or seen or studied a
9 board where there's no discussion of practices or
10 governance or how it works or those issues. I mean
11 those are really deep issues these days. Public
12 companies have corporate governance charters. They
13 have compensation committee charters, audit
14 committee charters. There are lots of rules around
15 this, particularly post Sarbanes-Oxley, and lots of
16 literature on how boards are supposed to work and
17 their obligations and their duties to act reasonably
18 and effectively.

19 Q. Did you study in this case whether
20 Cambridge complied with customs and practices?

21 MR. SEARLES: Objection; vague.
22 Ambiguous.

23 THE WITNESS: I'm not even sure how to
24 answer that. But, uhm, is there a particular custom
25 and practice? But my opinions go generally to

1 corporate governance expectations or otherwise.

2 Like I said, I'm not here to give opinions on the
3 facts or the law.

4 MR. GOTTLIEB: Q. Okay. And your report
5 doesn't make any conclusion about whether Anatoly
6 Hurgin violated any laws; is that right?

7 A. That's correct.

8 Q. And your report doesn't make any
9 conclusion about whether Alex Aurovsky violated any
10 laws, correct?

11 A. Yes.

12 Q. Does your report make any conclusion about
13 whether Anatoly Hurgin failed to fulfill whatever
14 level of duty you think is appropriate?

15 A. No, I mean we had this discussion. I have
16 my personal opinions about what happened here, but I
17 don't -- I'm not here to give an opinion on the
18 ultimate issues. I'm here to assist the trier of
19 fact and -- on issues of corporate governance that
20 are relevant and help them understand any principles
21 that they may deem appropriate and the conduct of
22 parties under these laws in accord with custom and
23 practice.

24 Q. Your report also doesn't make any
25 conclusions about whether Alex Aurovsky failed to

1 fulfill whatever levels of duty you believe is
2 appropriate?

3 A. It's the same answer I just gave, which is
4 no, it doesn't. As we discussed, I do have some
5 thoughts about it.

6 Q. Your report doesn't define what level of
7 duty you think is actually appropriate other than to
8 return to the reasonable reliance standard that
9 you've said over and over again here today. Is that
10 right or is there something else?

11 MR. SEARLES: Objection; misstates his
12 testimony and his report.

13 THE WITNESS: That's a vague question.
14 I'm not sure what duty we're talking about. Again,
15 I'm giving opinions on customs and practices. And
16 to the extent we're discussing custom and practices,
17 I'm happy to. But I don't really understand the
18 question or what it refers to.

19 MR. GOTTLIEB: Q. Well, let's -- it's a
20 good point. I agree with this. Is your report
21 trying to define a level of duty that is appropriate
22 for an officer or director to fulfill in evaluating
23 SEC disclosures?

24 A. Uhm, I think the answer is I don't think
25 so. I mean it can be. The answer is that in

1 general define the duty, to me, seems to be a legal
2 conclusion. When you're looking at the actions of
3 people, you look at what the customs and practices
4 are to see how they comply with that duty to the
5 extent applicable.

6 And so to the extent that's relevant, I'm
7 offering -- I'm giving opinions and the lawyers in
8 this case can offer opinions to the extent they go
9 to that. But if -- I don't think I'm here to give a
10 legal conclusion.

11 Q. One moment. All right. So you understand
12 that Hurgin and Aurovsky were directors, officers,
13 and controlling shareholders of a foreign target,
14 i.e. a non-U.S. company in a SPAC transaction,
15 right?

16 A. I think so if I understood the question.

17 Q. Right. But it wasn't a trick question.
18 You're -- does your opinion specifically address the
19 customs and practices of directors and officers of a
20 foreign target in a SPAC transaction?

21 MR. SEARLES: Objection; asked and
22 answered.

23 THE WITNESS: Yes. I mean, I think we've
24 gone over this. I think these are issues that
25 are -- my opinion of customs and practices and

1 acquisition transactions and disclosures. And
2 that's what's going on here.

3 MR. GOTTLIEB: Q. Well, let's be
4 specific about two things. One is scope and we'll
5 get to methodology. So on the scope, you mentioned
6 that you had not represented as counsel any
7 directors or officers who were -- directors or
8 officers of a foreign target in a SPAC.

9 Is that your testimony?

10 MR. SEARLES: Asked and answered. Asked
11 and answered.

12 THE WITNESS: I'm not sure that's my exact
13 testimony. I think the question that you asked was
14 whether I had represented a private FPI that was
15 acquired by a SPAC, and I had said that I have not.

16 MR. GOTTLIEB: Q. Okay. Let's ask both
17 then. Had you represented a director or officer in
18 such a company? A foreign target of a SPAC?

19 A. Yeah, I answered that. I mean, I just
20 answered it. And I answered it a couple of hours
21 ago.

22 Q. Well, you said you didn't answer -- you
23 said you didn't represent the company, which I think
24 you did say a couple of hours ago. But here, have
25 you ever represented a director or officer of such a

1 company in such a transaction?

2 A. No, I have not.

3 Q. Okay. And you said there were no
4 empirical studies of these customs and practices.
5 You said you wouldn't even know how that would be
6 done?

7 MR. SEARLES: Objection; vague and
8 ambiguous as to the term empirical study.

9 THE WITNESS: I just refer back to my
10 prior answer.

11 MR. GOTTLIEB: Q. Okay. Are there any
12 law review articles that lay out where the customs
13 and practices for directors and officers of a
14 foreign target in a SPAC?

15 A. I think so, yeah.

16 Q. Are any cited in your expert report?

17 A. Yeah, I mean the Hillary Sale articles.
18 The articles that I did. I mean there's lots of
19 writings on customs and practices of targets when
20 they're selling or making disclosure.

21 Q. No. The Hillary Sale article is more
22 general. It's not about the duties of a director or
23 officer in a foreign target of a SPAC.

24 MR. SEARLES: Objection; vague and
25 ambiguous. You're drawing a false distinction with

1 respect to a SPAC.

2 MR. GOTTLIEB: Q. Mr. Searles, that's
3 getting a little bit too argumentative and
4 instructive for the Southern District of New York.
5 How about just objection?

6 So the Hillary Sale article doesn't
7 address specifically duties of -- the customs and
8 practices for directors or officers of a foreign
9 target in a SPAC.

10 MR. SEARLES: Objection; vague and
11 ambiguous. Irrelevant.

12 THE WITNESS: I disagree with that
13 statement. Again, I think you're making -- you're
14 trying to say because it doesn't contain the word
15 SPAC that these are inapplicable. But these are
16 general principles that are applied when you have a
17 disclosure being made just like there are general
18 principles when you acquire a company or sell a
19 company or if you're target directors or acquire
20 directors. You don't need the word SPAC to do it.
21 And you don't need an empirical study that's so
22 confined.

23 Like you said, these are general
24 principles of custom and practice that there's been
25 frankly hundreds of articles written on, probably

1 thousands. And I've written on them myself both in
2 my M&A case book and in my academic articles.

3 MR. GOTTLIEB: Q. The key here is that
4 the target is a private company, a private foreign
5 company. So let's talk about that for a second.
6 Are there empirical studies specifically reviewing
7 the customs and practices of a director or officer
8 in a foreign private company that is being acquired
9 and going -- thus going public in the U.S.?

10 MR. SEARLES: Asked and answered.

11 THE WITNESS: I think you have to define
12 for me what empirical studies are and what aspects
13 they're looking at and otherwise. There are
14 thousands of empirical studies looking at foreign
15 private issuers. I've written on foreign private
16 issuers extensively, and I cite many of them. So I
17 think you need to be more specific.

18 And, again, the line of questioning that
19 you have is just -- it's wholly irrelevant because
20 that's not how custom and practice looks at. That's
21 not how the market looks at it. These are general
22 principles and disclosure. There's no such thing as
23 because you're a SPAC you're exempt from disclosure
24 principles. The same rules apply and the same
25 customs and practices apply across the board. And

1 so -- I mean I've answered these questions before so
2 it seems like --

3 MR. GOTTLIEB: Q. So is that a no you're
4 not aware of any empirical studies about duties of
5 directors or officers who are foreign targets of a
6 SPAC?

7 A. No -- oh, sorry.

8 Q. Okay. Let's let me go back to FBI -- FPIs
9 for a second. I know you defined what a foreign
10 private issuer is, but why would a foreign private
11 company like ACSI be an FPI? I mean it literally
12 never issued anything. Why would it be a foreign
13 private issuer?

14 A. Again, I'm not really sure what the
15 context is. You asked me what the definition of
16 foreign private issuer is and it's within the
17 federal securities laws. And within those, I'd need
18 to look at it again. But from my read of it,
19 Ability is a foreign private issuer under that
20 definition. Not really sure what the -- what you're
21 getting at.

22 Q. Okay. If Ability -- and here we mean
23 pre-merger Ability, ACSI. ACSI was not an FPI,
24 would that change your opinion materially?

25 A. No. I said no.

1 Q. Yeah, I heard. So you mentioned that you
2 had represented 10 or 20 foreign private companies
3 that were acquisition targets. You didn't write
4 about any of those in your expert report, did you?

5 A. I don't really know what you mean. Again,
6 I'm drawing on my background, experience of extent
7 that that informed my opinions. I was writing about
8 them. I didn't mention a specific transaction if
9 that's the question.

10 Q. Well, the question is -- is this. You're
11 telling me what the customs and practices are for
12 directors and officers of foreign targets in -- in a
13 SPAC. But you've never done one of those. You're
14 telling me that you're -- you're telling me customs
15 and practices for directors and officers who are
16 foreign targets in non-SPAC acquisitions and you say
17 you've done 10 or 20 of those, but none of those are
18 actually listed in your expert report.

19 What I'm trying to get at is, how do I know
20 that what you're saying about what their customs and
21 practices are is correct? Like how could that be
22 verified or tested?

23 MR. SEARLES: Objection; vague and
24 ambiguous. Question is previously been asked
25 regarding verification. You're just repeating

1 yourself at this point, Jason.

2 MR. GOTTLIEB: Q. You can answer the
3 question.

4 A. I think you're misstating my testimony and
5 typifying it. And essentially, again, I'm giving a
6 report and opinions on what the customs and
7 practices are in these issues. And I've spent
8 almost a decade as an M&A practitioner, both in
9 London and New York, representing both publicly
10 traded companies, foreign companies, foreign private
11 issuers, private companies, foreign companies, and
12 disclosure including preparation of proxy
13 statements, registration statements, tender offer
14 documents, or otherwise.

15 I've done repeated expert witness
16 testimony on issues of disclosure and disclosure
17 process as well as corporate governance of fiduciary
18 duties. I've written an M&A case book. I've been
19 named three times by the National Association of
20 Corporate Directors one of the most --

21 THE REPORTER: (Clarification.)

22 THE WITNESS: One of the most influential
23 people in the boardroom. And so when I give these
24 customs and practices opinion, they draw on all
25 that. I'm also, as we discussed, a director of a

1 SPAC. And so in general the principles that we're
2 talking about are principles that apply in
3 acquisitions generally, to boards generally, to
4 disclosure generally, and so -- and that's been my
5 observations throughout my entire career.

6 And so the disclosure obligations of
7 willful blindness or the customary and usual
8 practices on it don't change because it's a SPAC
9 acquisition versus a biotech acquisition. Just like
10 principles concerning acquisitions don't generally
11 change, there's not an industry type of acquisition.
12 So it's not a biotech acquisition versus a car
13 company acquisition in terms of processes and
14 procedures or fiduciary kids. Those don't change.
15 And those don't change in a SPAC or otherwise.

16 Now, there may be issues that are for
17 salient because it's a foreign issuer or foreign
18 private issuer. But as I've said, I've regularly
19 worked with and represented foreign private issuers.
20 I've written about them multiple times. I've
21 lectured on these issues.

22 I'm going to teach a Tel Aviv law school
23 in the spring if they let me in. I was supposed to
24 go in December to teach on these issues, including
25 M&A, in the context of Israeli companies or

1 otherwise. I've done M&A with Israeli companies
2 that are private and bought Israeli companies that
3 are private as well as done transactions with them
4 and given opinions in the Tel Aviv court on issues
5 of the corporate governance, uhm, that generally
6 apply in terms of customs and practices.

7 So in terms of what I've seen in the world
8 and how it's gone, uhm, I could continue. But
9 that's generally where I've gone, where I'm informed
10 by, and where I think that the customs and practices
11 that I'm giving -- and generally speaking I think
12 that's the uniform opinion -- applied in this
13 circumstance.

14 MR. GOTTLIEB: Q. Your -- your personal
15 experience on these issues as a practicing lawyer
16 ended in 2004; is that right? That was the last
17 time you --

18 MR. SEARLES: Objection --

19 MR. GOTTLIEB: Q. -- private practice?

20 MR. SEARLES: Objection; misstates his
21 prior testimony on this subject.

22 THE WITNESS: Uhm, I finished my law firm
23 experience at Freshfields in 2004. Since that time,
24 I have done some legal work for companies, as well
25 as done expert witness, as well as advised on

1 corporate governance and corporate governance
2 procedures and otherwise and created corporate
3 governance policies for organizations.

4 MR. GOTTLIEB: Q. And you said you've
5 done a lot of expert testimony about this, but that
6 expert testimony is supposed to be based on
7 something, right?

8 MR. SEARLES: Objection; vague and
9 ambiguous.

10 THE WITNESS: I don't even know what that
11 means.

12 MR. GOTTLIEB: Q. I asked you about
13 your -- your -- the source of this and you told me
14 about your personal experience working at law firms,
15 which ended in 2004. And then you talked about
16 expert testimony, and you wrote an M&A case book and
17 you're teaching and all sorts other stuff. But all
18 that other stuff, being an expert, writing a case
19 book, teaching, those all have to be based on
20 something. You're -- you're not a freestyle
21 freelance expert. You're expert on something.
22 You're not writing an M&A case book about nothing.
23 You're writing about something.

24 So what I'm trying to get at here is your
25 actual personal experience, what you know about what

1 directors and officers actually do, their customs and
2 practices, and particularly the customs and practices of
3 directors and officers in foreign private companies. I
4 wanted to talk about foreign private SPAC targets, but
5 we've established you've got nothing on that. We're
6 just looking at foreign --

7 MR. SEARLES: Objection; argumentative.
8 You keep on mischaracterizing his testimony, Jason.
9 It's drawing this false distinction between SPACs
10 and other public companies or private companies.
11 The distinction you're attempting to draw has been
12 repeatedly rebutted by this expert. So to the
13 extent you continue to use this distinction to now
14 insult our expert is simply argumentative and
15 inappropriate.

16 You're also asking the same question over
17 and over again about some vague source about
18 something that your questions are now becoming
19 incomprehensible perhaps because it's late in the
20 day.

21 MR. GOTTLIEB: I believe the word you're
22 looking for, Don, is objection.

23 MR. SEARLES: Yeah, and I just made one.

24 MR. GOTTLIEB: Q. And that's it. What
25 I'm trying to get at -- what I'm trying to get at

1 all day and I haven't really yet heard it --

2 MR. SEARLES: Objection; argumentative.

3 MR. GOTTLIEB: Q. -- what is the source,
4 your personal experience, of the duties -- what
5 directors and officers actually do, their actual
6 customs and practices of what they do when they are
7 directors and officers of a foreign private company
8 in acquisition?

9 MR. SEARLES: Asked and answered.

10 MR. GOTTLIEB: Q. And -- and all I
11 wanted to know -- not where you taught. Not what
12 case books you wrote. All I want to know was what
13 is the source, your personal source, of that
14 information? Is it your own studies? Peer reviewed
15 studies? Articles? Or is it just your personal
16 experience as a lawyer that ended in 2004?

17 MR. SEARLES: You're asking for the
18 foundation of his opinion? Is that right, Jason?

19 MR. GOTTLIEB: I asked the question, Don.
20 Please stop interrupting.

21 MR. SEARLES: It's --

22 MR. GOTTLIEB: It's really improper.

23 MR. SEARLES: It's so improper to be
24 continuing to be asking the same question over and
25 over again. To be getting the same answer over and

1 over again. Excuse my frustration. Objection.

2 MR. GOTTLIEB: Every time I ask a question
3 I get a recitation of a C.V. It's a very long
4 impressive C.V. It's very nice. What I'm asking
5 for is the basis of his opinion.

6 MR. SEARLES: One more time,
7 Professor Solomon.

8 THE WITNESS: Can you just read back my
9 prior answer in full?

10 MR. GOTTLIEB: Q. No.

11 A. No. That's my answer. That's my answer.
12 And I'm allowed to give an answer that's true and
13 correct and as I understand the question. There's
14 something I don't understand about the question.
15 I'm happy to discuss with you. But I believe I just
16 answered the question, and I'm going to answer it
17 again by reading back my prior answer. And I think
18 I've answered the question multiple times. If
19 there's something I'm missing, I'm happy to try and
20 understand it. But I would ask that my prior answer
21 be re-read as that's my answer.

22 MR. GOTTLIEB: Let's -- let's take a
23 five-minute break, and we'll come back and see if we
24 can close this out.

25 VIDEOGRAPHER: Off video at 1:52 p.m.

1 (The deposition was in recess from 1:52 to
2 2:03.)

3 VIDEOGRAPHER: Back on video at 2:03 p.m.

4 MR. GOTTLIEB: We have no more questions.

5 Thank you, Professor Solomon.

6 THE WITNESS: Thank you.

7 MR. SEARLES: No questions on behalf of
8 the SEC.

9 VIDEOGRAPHER: This concludes today's
10 deposition. Off video at 2:03 p.m.

11 THE REPORTER: Could I just ask before you
12 go if the SEC side wants to order a transcript?

13 MR. SEARLES: We do. Let me make sure,
14 through my paralegal, that we have the funding in
15 place to do that.

16 (The deposition was concluded at 2:03 p.m.)

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STEVEN DAVIDOFF SOLOMON

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CERTIFICATE

I, the undersigned, a Certified Shorthand Reporter, State of California, hereby certify that the witness in the foregoing deposition was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of the said witness was reported by me, a disinterested person, and was thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete, and true record of said testimony; and that the witness was given an opportunity to read it and, if necessary, correct said deposition and to subscribe the same.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing deposition and caption named, nor in any way interested in the outcome of the cause named in said caption.

Executed this 23rd day of December, 2021.



LAURA AXELSEN, C.S.R. 6173

ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: SEC vs. Hurgin

Dep. Date: 12/13/21

Deponent: Steven Davidoff Solomon

Pg.	Ln.	Now reads	Should read	Reason
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SIGNATURE OF DEPONENT

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THIS ____ DAY OF _____, 2021

(Notary Public)

MY COMMISSION EXPIRES: _____